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# Judicial reform and four popular initiatives

BY PIERRE-ANDRÉ TSCHANZ

*The first popular referendum of the new millennium is a sizeable package: in addition to the reform of constitutional articles governing the judiciary, no less than four popular initiatives are being put to the vote.*

**THE NEW FEDERAL CONSTITUTION** came into force on 1 January this year, sealing the lid on the first stage of the process of reforming federal institutions with a modernised, updated constitutional text.

Since this revision was initiated, however, reforms of a material nature have been announced, particularly in the area of justice. The issue of judicial reform being put to the vote is the first package of proposals for material reforms at the constitutional level.

## Judicial reform

The thrust of these judicial reforms is three-fold. Firstly they provide the constitutional law basis for a unification of civil and penal

procedure throughout Switzerland. At present Switzerland boasts 27 civil and penal procedures: an unsatisfactory state of affairs that impedes the fight against crime and can lead to inequalities in the treatment of civilian cases.

Secondly, the aim is to provide Swiss citizens with a constitutional law which allows cases to be tried by an independent court. On the one hand this should simplify legal channels, and on the other guarantee access to the judge. Generally speaking, the involvement of an independent court has already been introduced, but exceptions exist in specific areas - for example in cases where the Federal Council or a government department makes a definitive ruling, or in the event of a breach of electoral freedom within the framework of federal referendums.

Thirdly and lastly, the judicial reforms are aimed at relieving the current workload of the Federal Court in Lausanne and the federal court of insurance in Lucerne. The extent of the workload is such that judges risk being unable to evaluate individual cases with the requisite attention to detail, or that trials take up so much time that legal protection can no longer be guaranteed. Rather than impeding access to the Federal Court, parliament has proposed a provision whereby disputes at all levels must first be evaluated by a legal body before they are



The non-election of Christiane Brunner in 1993 was a bitter disappointment for the women's rights movement.

permitted to go to the Federal Court. This would relieve the latter from the burden of most disputes which it currently has to handle as the sole court of jurisdiction. Hence the proposed reform underpins the role of the Federal Court as the supreme organ.

## Shorter procedure

The popular initiative "for an acceleration of direct democracy" wants to force the government to submit popular initiatives to the vote within twelve months of their submission. The deadline can be extended by a year at most if the Federal Assembly submits a counterproposal to the issue and the majority of the initiative committee agrees to it. Government and parliament recommend by an overwhelming majority a rejection of the initiative. They believe that the short time frame proposed by the initiative would no longer permit an in-depth examination of the issues and would make drawing up a counterproposal practically impossible. Moreover they point to the fact that measures to accelerate the referendum process were implemented in 1997. At present the

maximum period is three years and three months, extendible by 18 months in the event of a direct or indirect counterproposal.

This initiative should not be confused with another which was launched last summer by the populist Right and, while pursuing the same goal, is much more radical.

## The quota initiative

The popular initiative "for fair representation of women in the federal institutions (3rd March initiative)" proposes the introduction of a quota system to ensure a balanced representation of women in all federal organs. The catalyst for this initiative was the events of 3 March 1993, when the Federal Assembly failed to elect the official Social Democrat candidate, Christiane Brunner (GE), to the seat vacated by Federal Councillor René Felber.

The initiative was launched by a group of women which is demanding fair representation for women in the Federal Constitution. They want to see at least three female members of the Federal Council and, until this goal is reached, propose that a woman be

elected whenever a seat becomes vacant. In addition, they are calling for every canton to send one female and one male representative to the Council of States. The difference between the numbers of male and female representatives must not be more than one in each canton, and the proportion of female members and deputy members of the Federal Court must be at least 40 percent. Finally, they also advocate legal measures to ensure a balanced number of women in administrative posts.

Government and parliament are recommending that this initiative be rejected since it prescribes a fixed rule, which limits individual rights to equality between the sexes as well as electoral freedom by bolstering the concept of equal opportunity. Although this initiative is intended to promote women's rights, it could also have the opposite effect by, for example, preventing two women from the same canton being elected to the Council of States, as is the case at present with the Christiane Brunner/Françoise Saudan duo. Government and parliament believe that measures which promote women as a socially disadvantaged group but discriminate against them in certain cases are inappropriate.

## Genetic engineering

The initiative for humane reproduction calls on the government to set up provisions for the handling of human tissue and genotype. To protect human dignity and as a guarantee for personality and the family, it calls for a ban on reproduction outside the female body and the use of donor tissue cells for artificial propagation.

The Federal Council and parliament regard these demands as excessive - the more so since in 1992 the overwhelming majority of voters and cantons accepted a constitutional article which expressly permitted in vitro fertilisation but forbade the use of surrogate mothers and genetic manipulations. On the basis of this article, government and parliament drew up a law governing artificial insemination, which represents an indirect counterproposal to the initiative. It forbids the donation of egg cells and embryos as well as surrogate motherhood and diagnosis prior to insemination.

## Initiative to halve traffic

This proposal envisages halving the volume of motorised road traffic in Switzerland

within ten years. Parliament and government consider this a highly problematic and excessive initiative which would have catastrophic implications for economic growth and employment.

Moreover, it would raise serious questions on the funding of key railway proposals (new alpine tunnels, improvements in the competitiveness of rail and combined transportation). In addition, public transport authorities would be unable to provide the capacities required to cope with the increased demand created by this initiative. For this reason government and parliament recommend that the proposal be rejected.

## Information on cassettes

Swiss Radio International is making available free of charge to Swiss Abroad audio cassettes describing voting subjects and explaining what is at stake. If you fill in the order form and send it to Swiss Radio International, Referendum Cassettes, CH-3000 Berne 15, you will receive a cassette containing information on voting issues shortly before each referendum.

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## Federal Referendums

12 March 2000

- Federal decision on judicial reform (to relieve the workload of the Federal Court).
- Popular initiative "for the acceleration of direct democracy" (processing times for popular initiatives in the form of a detailed draft).
- Popular initiative "for the fair representation of women in the federal authorities (3rd May initiative)".
- Popular initiative "for the protection of humans against reproductive technology manipulations (initiative for humane reproduction)".
- Popular initiative "to halve motorised road traffic for the preservation and improvement of living space (traffic halving initiative)".

21 May 2000 / 24 September 2000 / 26 November 2000

Subjects not yet decided.