

## The Exchange of Experiences in the Area of Constitutional Reform Continues Lessons for State Reform in Austria

Vienna (PK) – The conference bringing together experts in the area of constitutional reform continued today in the Austrian Parliament Building. In the morning, concrete experiences gained through constitutional revisions in Switzerland and Germany were reviewed, while in the afternoon, a round of leading experts in the field discussed the lessons that could be drawn from these experiences for state reform in Austria. Sharing the podium with university professors Peter Bussjäger, Anna Gamper, Gerhart Holzinger and Theo Öhlinger was the former President of the National Council, Andreas Khol.

### The Swiss Example

The series of lectures began with one of the key topics, Switzerland, with Luzius Mader and Thomas Pfisterer debating the “complete revision” of the Swiss federal constitution.

The first speaker of the second day, Luzius Mader, Vice-director of the Federal Department of Justice in Bern, examined in great detail Swiss constitutional reform. He spoke primarily of the chronological sequence of the debates that took place and the actual implementation of reform objectives, and, in particular, the way in which the project was organized.

The speaker presented the individual areas that were dealt with in the run-up to the revision of the constitution and explained the manner in which these projects were implemented. Mader emphasized that each new development in the areas of finance, justice, and the Swiss parliamentary system influenced constitutional reform efforts.

Constitutional reform consisted of three parts: revision of the constitution, adopted in a referendum held in 1999; civil rights reform, adopted by the Swiss parliament then presented to the people and the upper chamber for adoption; and justice reform, which was also approved in a referendum. Mader rounded off his overview by presenting the chronological sequence of the constitutional reform project as well as information about

the participants and the way in which the various projects were integrated. In conclusion, the speaker offered a personal summary of the entire reform process.

The member of the upper chamber for the Canton of Aargau, Thomas Pfisterer, explained the involvement of the Cantons in the federal constitution. He also shed light on the role played by the Cantons in the revised constitution and their position in the Swiss constitutional structure. In general, the Confederation must inform the Cantons of its plans in a timely and comprehensive manner so that the Cantons can effectively participate in the decision-making process of the Confederation. The Cantons also play an important role in foreign policy and education.

The speaker discussed in concrete terms the lessons learned from constitutional reform and described the impact on political practices. In revising the constitution, huge progress was made through a kind of collaborative process and, as a result, the way to a “responsibility-fulfilling federalism” was opened.

Nevertheless, much remains in a state of flux, but the chosen method is headed in the right direction. Pfisterer supported his argument by using examples drawn from day-to-day politics and expressed his opinion that direct democracy may be the best support for Swiss federalism. This has been extended and enshrined in law through a revision of the constitution, whereby it became possible to react in an adequate manner to the new political challenges.

As well, federalism must be pursued in a logical and measured, collaborative way with an eye on the big picture. According to the speaker, Swiss federalism is one that is evolving from the bottom up. He then went on to answer questions that arose regarding the details involved in this process. In closing, he maintained that Switzerland is headed in the right direction, but needs to firmly continue along the road taken.

## The German Example

The former State Secretary of Saxony-Anhalt, Rainer Holtschneider, began his presentation by discussing the factors that helped push through “Federalism Reform I”. To examine the concrete goals, issues, and successes, he started with a historical review, devoting a substantial portion of his speech to so-called cooperative federalism. This depended initially on a broad consensus, which was later criticized because of changing political and social conditions, and could have led to the call for a reform of the entire system.

In 1998, the first steps were taken in the direction of reform—because of the difficult political-party situation at the federal level—and a commission was formed. This commission failed, however, due to a schedule that was too tight and an inability on the part of the players to agree.

It was only in the summer of 2003 that the situation changed insofar as the discussion was raised to the parliamentary level. The object of the discussion was, among other things, the assignment of legislative responsibilities and the financial relationship that exists between the Federation and the Länder. The commission established in 2003 failed because of its size (102 members) and a lack of consensus on key points.

The process that saw positions developed through the two chairmen and insistence on a fundamental consensus expressed openly proved to be productive, albeit temporarily, because it, too, managed to fail. Nevertheless, approximately 80% of the negotiated points could be included in the Reform of 2006.

According to Holtschneider, there were two critical points in the reform negotiations: universities and the environment. Agreement could eventually be reached by clearing the way to a solution, by establishing a culture of mutual give-and-take between the Federation and the Länder, by searching for solutions extending across all disciplines, and by collaborating with well-known politicians.

Anton Hofmann of the State Chancellery of the Free State of Bavaria addressed the singularities of German federalism and the balance that evolved historically between the Federation and the Länder. The particularly strong position of the Federation as legislative body led to the use of the Bundesrat as a means to block change. The psychological strain eventually led to the recognition of the need for reform.

Hofmann continued by addressing the difficulty of holding parallel discussions on federalism reform and financial equalization. In the current example, a resumption of talks on the relationship between the Federation and the Länder would have only been possible once the financial equalization negotiations had been concluded.

In conclusion, Hofmann pointed out that a separation of competencies in specific areas is absolutely necessary, however, the influence of the Länder must be preserved.

#### Lessons for Austria

In the afternoon, a top-notch group of experts gathered on the podium discussed the possible lessons that Austria can learn from the examples of constitutional reform that were presented. Peter Bussjäger summed things up by saying that Austria can definitely draw lessons from the international contributions made during the 2-day conference. Based on the examples given, constitutional reform must be understood as a long-term process. In addition, the need to include all the parties concerned is a significant factor in its success. The belief that individual responsibilities can be assigned to one specific level alone is misleading. According to Bussjäger, when it comes to important areas of responsibility, these should be divided in the same way between the Federation and the Länder, whereby the Länder are guaranteed equal participation.

Anna Gamper, like Bussjäger, a professor at the University of Innsbruck, stressed the importance of corresponding expectations for constitutional reform and referred to the fact that most constitutions are more rigid than the Austrian one, which has already been amended 90 times. Contrary to the impression sometimes expressed that Austria has a real need for change, the constitution has yet to be reformed.

But, deciding which reforms are worth striving for and which goals should be pursued requires reflection. In the speaker's opinion, the essence of the revision as well as the methods used to set the reform in motion must be examined. At this point, the international comparison of various reform processes brings with it corresponding insights—such as the general trend towards decentralization in Europe—that should also be examined in Austria.

Gerhart Holzinger of the Constitutional Court noted the need to reform the domestic constitution, not least because of the flaws that were codified in 1920. In the current reform process, it is more a question of overcoming real flaws, i.e., revising the federal constitution, in order to examine the principle behind the federal state—key word: federal state reform—as well as codifying basic rights in the form of a genuine Austrian catalogue of basic rights.

Against this backdrop, the speaker took stock of the activities completed to date, formulated the challenges that await the process of constitutional reform, and outlined the lessons to be drawn from previous activities for the next step in the process. There are now some important approaches, which, when taken in isolation, already represent an important step forward on the road to reform of the domestic constitution.

Professor Theo Öhlinger of the University of Vienna reported on the status of the working group that was established to reform the constitution. In his opinion, the working group is headed down the right road, especially since the decision was made in favour of a package solution, a lesson the group learned, apparently, from the Austrian Convention. The Convention eventually failed because it called for a complete revision of the constitution. Nonetheless, not only did it accomplish a great deal of preliminary work, it also revealed that the domestic constitution needed to be reformed and, in so doing, laid the groundwork for such a reform.

Currently, there is a window of opportunity, which also exists as a result of the governing coalition. It, in turn, could use this opportunity to prove itself publicly through

constitutional reform. The speaker discussed the proposals made to date by the working group and explained these using examples. According to Öhlinger, if only the first package prepared by the working group were to be adopted by Parliament, this would be the biggest reform ever faced by Germans [**Austrians?** – **TRAD**]. In closing, the speaker explained that it will be up to politics, if the reform is to succeed.

The former National Council President, Andreas Khol, said that what is sought is not major reform, but incremental amendments that fall conform to the way in which the constitution is constructed, yet each one represents significant progress. Lessons must be learned from the European Convention and moderately reformed. To do this, the experience gained to date—from the Austrian Convention as well as from the discussions surrounding the Perchtoldsdorfer Agreement—needs to be taken into account and enough room left for each legislator to manoeuvre.

Overall, the reform is heading in the right direction, but the details are open for discussion. Khol seemed convinced that the constitution can still be revised and the necessary advancements achieved. He is also confident that the opportunity still exists for a catalogue of basic rights and federal state reform. Important preliminary work has been done, although, naturally, those affected must be included in the process, therefore, much discussion still remains.

The former president announced three packages that the working group is expected to put forward. The second package is to be presented to the National Council in November, the third in March 2008. Following this, the National Council will have the opportunity to review the issues. Therefore, there is a good chance that the Austrian constitution will be progressively more legible and closer to reality, concluded Khol.

In closing, the President of the National Council, Barbara Prammer, emphasized that the timetable for the upcoming reform must be seen as an important factor. Harmonizing financial equalization and the federalism debate demands a great deal of skill. The first block of reform is currently being evaluated, with several divergent opinions being

expressed. In any event, a more in-depth discussion of the issue must follow because, according to Prammer, no one involved in this process should be left out. The time set aside for discussion of the package is entirely reasonable given the extent of the work accomplished by the Austrian Convention.

The National Council President thanked the organizers of the event and announced, furthermore, the establishment of a discussion tool for dealing with topics relating to day-to-day political issues.