

# Experts Tackle the Constitution

Second round of talks on amendments expected to succeed after previous stalemate

BY PETER BUßJÄGER



REUTERS/LEONHARD FOEGER

Austrian Chancellor Alfred Gusenbauer (l.) faces the press with Vice Chancellor Wilhelm Molterer during a news conference in Linz. Gusenbauer, a social democrat, pledged constitutional reform as part of his coalition agreement with the conservatives.

**A**USTRIA'S NEW CHANCELLOR, Alfred Gusenbauer, a Social Democrat, has declared reform of the Austrian federal state and of the administration as "the heart" of the governing agreement between the two parties in his coalition Government.

Gusenbauer was sworn in as chancellor in January 2007, after more than three months of difficult negotiations between his party and the conservative People's Party that ended in a coalition agreement.

National elections last Oct. 1 led to a near tie in the number of legislative seats held by the Social Democrats and the People's Party.

The choice of federal reform was hailed as a breakthrough, because the conservative People's Party had traditionally favoured a high degree autonomy of the *Länder*, the equivalent of states or provinces, while the Social Democrats had in the past argued for a strong central government.

In fact, the section of the agreement dealing with the new constitutional reform does not aim to write a new constitution, but rather seeks to achieve other reforms such as:

- establishing administrative courts in the *Länder* which would allow participation of the *Länder* in courts.
- organizing a new system of administration for education, which could enable the *Länder* to play a more important role in Austria's educational system.
- enhancing the constitutional autonomy of the *Länder* and reducing the supervising powers of the federation.
- creating a new distribution of competencies by a so-called "third pillar," which would allow a certain form of cooperative legislation between the federation and the *Länder*.

This last goal, the creation of a "third pillar," is the most difficult. Many observers doubt whether there is any chance of reaching consensus on a new form of power sharing.

Austria last tried to reform its federal system between June 2003 and January 2005. But agreement was not reached on the distribution of competencies or the restructuring of financial relationships between the federal level, the *Länder* and local governments, or on the creation of a new charter of fundamental rights.

## One Expert from Each Party

One essential difference with the new constitutional reform under Chancellor Gusenbauer is that the reform proposals will be fleshed out by a small group of experts who played an important role in the past attempt at reforming Austria's federal system. The agreement between the Social Democrats and the People's Party names two experts for each of the parties in the coalition. The experts from the Social Democrats are Theo Öhlinger, professor of constitutional law at the University of Vienna, and Peter Kostelka, former speaker of the Social Democratic party caucus in the Austrian legislature, later named Ombudsman by his party. The experts from the People's Party are

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Andreas Khol, former President of the Austrian legislature, now retired but still one of the most prominent political experts on Austrian federalism, and Franz Fiedler, former President of the Austrian court of audit.

Two experts were delegated by the conference of the state governors. The first is Gabriele Burgstaller, state governor of Salzburg and a member of the Social Democrats; the second is Herbert Sausgruber, state governor of Vorarlberg, from the People's Party. These two individuals are partly represented by other experts. Georg Lienbacher, head of the Constitutional Service of the Federal Chancellery, is Secretary General of the group. The group of experts has until the end of June to work out its proposals.

### “Executive Federalism” Ahead?

Presently, the expert group is focusing its energies on issues related to administrative courts in the *Länder*, the organization of the educational administration in Austria and concentrating the administration of social welfare in a one-stop-shop on the regional level. There is a chance that these proposals will find support from the federal government and the *Länder*. As a result, these projects might strengthen “executive federalism” in Austria. It can be expected that the opposition parties, the Greens, the Freedom Party and the BZÖ (Jörg Haider's party), will object to these projects. They may not be able to block them if the Social Democrats and the People's Party, which also dominate eight of nine *Länder* (with the exception of Carinthia, governed by Jörg Haider's party) reach consensus.

Other chances for a new distribution of powers in legislative areas are very slim. There are huge differences between the positions of the *Länder* and the proposals of the federation. On the whole, it


is unlikely that the *Länder* will enhance their legislative functions and gain more legislative autonomy. Perhaps the creation of co-operative legislation between the federation and the *Länder*, in the form of a so-called “third pillar”, will work as a dry run regarding some matters such as those related to hospitals, social welfare and aspects of youth affairs. That could pave the way for further change.

### Past Attempts Failed

The chances for reform this time are much better than in the past. One previous attempt at reforming the federal system was the Structural Reform of the Competencies, which took place from 1989 to 1994. Faced with the possibility of Austria's accession to the European Union, the *Länder* demanded a fundamental redistribution of responsibilities within the federal system to compensate for their loss of powers and influence in various legislative realms. In the end, the *Länder* rejected the compromise formula.

The second project for structural reform of the Austrian federal system was the Austrian Constitutional Convention, held from June 2003 to January 2005.

The convention, spurred on by Austria's coming accession to EU membership, tried to draft reform proposals for the Austrian political system and the constitution. The convention finished its work in January 2005 without reaching an agreement.

Although both reform projects had similar goals, there is one important difference. In the late 1990s and the first years of the 21st century, the paradigms of the Austrian discussion about the federal system changed. Reform discussions no longer dealt with the strengthening of the powers of the *Länder*, but rather with the future of the federal system itself. 

## SCHWARZENEGGER [FROM PAGE 3]

own health care systems this year.

Colorado Governor Bill Ritter has pledged a program to provide universal access to health care by 2010. South Dakota Governor Mike Rounds unveiled a recommendation to raise the age for dependants covered by family health insurance plans to 30, whether or not they attend school. And New York Governor Elliot Spitzer proposed a four-year initiative to cover 500,000 uninsured low-income children and another 900,000 eligible adults through Medicaid.

Schwarzenegger plans to reduce the average cost of insurance by increasing the number of people insured in his state, and he has massive public support for this. He has also proposed charging new fees to doctors and hospitals. Although his proposals had not been drafted into a bill as of March 31, a January poll by the Public Policy Institute of California found that 71 per cent of Californians stand behind the Governor's efforts to fix the broken system.

“States and cities will become the important sources of leadership and the federal government will start shrinking,” Taplin predicted. “The states are asserting their right to create a just society for their citizens.”

Yet such policy innovation may be simply a cyclical phenomenon in American government.

“When the national government has been controlled by conservatives, it has been the states that have been the incubators of new responsibilities and programs for government,” wrote Richard Nathan of the Rockefeller Institute in *The Albany Times Union* newspaper in January. “Often, these state innovations morph into national policies when the national mood shifts and is more responsive to federal activism.”

However, there is a potential downside to the Schwarzenegger phenomena.

Earl Fry, Director of Brigham Young University's Washington Seminar Program in Provo, Utah, cautioned about sustainability.

“What happens when Arnold leaves office and the star power evaporates? How will the so-called Bear Flag Revolution be institutionalized when so much has been done on a personal basis and linked so closely to the well-known and charismatic Governor?” 

### 1920 Constitution Originated in a Bi-partisan Compromise

The Austrian Federal Constitution, drafted by jurist Hans Kelsen and others in 1920, created Austria as a highly centralized federation. Many of the amendments since then modified the distribution of competencies and transferred additional powers to the federal level.

The constitution was a compromise between the political intentions of the conservative Christian Social Party (the predecessor of today's People's Party, the ÖVP), which favoured a high degree of *Länder* autonomy, and the Social Democratic Party (SPÖ), which preferred a strong central power.