Introduction to Swiss Law

Constitutional Law

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18 September 2026

Overview

- Short History
- The Swiss Constitution
- Federal Authorities
- Swiss Federalism
- Fundamental Rights
- Political Rights
- Judicial System
- Tension Direct Democracy – International Law

Table of Contents

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– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

1848	First real national Constitution: creation of modern Switzerland
1874	First total revision of the Constitution; introduction of the optional referendum for federal acts
1891	Introduction of the popular initiative
1918	Proportional election for the members of the National Council
1921	Introduction of the optional referendum for international treaties
1971	Introduction of women's right to vote at the federal level
1978	Creation of the Canton of Jura
1999	Second total revision of the Constitution

Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Preamble

Part I: **General Provisions**
Art. 1-6

Part II: **Fundamental Rights and Liberties, Citizenship and Social Goals**
Art. 7-41

Part III: **Federation, Cantons and Communes**

Chapter I: Relation between the Federation and the Cantons
Art. 42-53

Chapter II: Competencies
Art. 54-125

Chapter III: Financial Regime
Art. 126-135

Part IV: **People and Cantons**
Art. 136-142

Part V: **Federal Authorities**
Art. 143-191c

Part VI: **Revision of the Constitution and Transitional Provisions**
Art. 192-197

Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Federal Assembly (Legislature; Art. 148-173 Cst.)

National Council (Art. 149 Cst.)

- Represents the people
- 200 members
- Popular election for four years



Council of States (Art. 150 Cst.)

- Represents the cantons
- 46 members (2 delegates per (full) canton)
- Cantonal election for four years



Federal Council (Executive; Art. 174-187 Cst.)

- 7 members (+ 1 Federal Chancellor)
- Election by the Federal Assembly for four years
- All major political parties are represented
- President of the Federal Council is elected for one year only



Current Composition of the Federal Council (2025)



Ignazio Cassis
Federal Department of Foreign Affairs



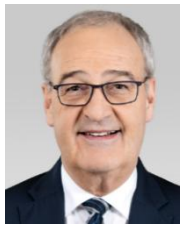
Albert Rösti
Federal Department of Transport, Communication and Energy



Elisabeth Baume-Schneider
Federal Department of Home Affairs



Martin Pfister
Federal Department of Defence, Civil Protection and Sport



Guy Parmelin
President 2026
Federal Department of Economic Affairs, Education and Research



Karin Keller-Sutter
Federal Department of Finance



Beat Jans
Federal Department of Justice and Police

Federal Supreme Court (Judiciary; Art. 188-191 Cst.)

- Highest judicial authority in Switzerland
- 40 full-time and 18 part-time judges
- Election by the Federal Assembly for six years; re-election possible (and the rule)
- Seat of the Court: Lausanne; two departments located in Lucerne



Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Art. 1 Cst. The Swiss Confederation

The People and the Cantons of Zurich, Bern, Lucerne, Uri, Schwyz, Obwalden and Nidwalden, Glarus, Zug, Fribourg, Solothurn, Basel Stadt and Basel Landschaft, Schaffhausen, Appenzell Ausserrhoden and Appenzell Innerrhoden, St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura *form the Swiss Confederation*.



Competences

Confederation

- All competences enumerated in the Constitution (Art. 42, 54-125 Cst.)



Cantons

- All competences not conferred to the federation (Art. 3, 46 Cst.)
- Implementation of federal law (Art. 46 Cst.)



Communes

- Competences are determined by cantonal law (Art. 50 Cst.)



Principles

- Subsidiarity (Art. 43*a* Cst.)
- Cooperation (Art. 44 Cst.)
- Cantonal autonomy (Art. 47 Cst.)
- Precedence of federal law (Art. 49 Cst.)

Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Human dignity (Art. 7 Cst.)

Equality and protection against arbitrariness

- Equality before the law (Art. 8(1) Cst.)
- Prohibition of discrimination (Art. 8(2) Cst.)
- Equality of men and women (Art. 8(3) Cst.)
- Protection against arbitrariness and principle of good faith (Art. 9 Cst.)

Social rights

- Right to assistance when in need (Art. 12 Cst.)
- Right to basic education (Art. 19 Cst.)
- Right to free legal assistance (Art. 29(3) Cst.)

Procedural guarantees

- General procedural guarantees (Art. 29 Cst.)
- Access to the courts (Art. 29a Cst.)
- Guarantees in judicial proceedings (Art. 30 Cst.)
- *Habeas corpus* (Art. 31 Cst.)
- Guarantees in criminal proceedings (Art. 32 Cst.)

Civil liberties

- Right to life and personal freedom (Art. 10 Cst.)
- Right to privacy (Art. 13 Cst.)
- Right to marry and to have a family (Art. 14 Cst.)
- Freedom of religion and conscience (Art. 15 Cst.)
- Freedom of expression and information (Art. 16 Cst.)
- Freedom of the media (Art. 17 Cst.)
- Freedom to use any language (Art. 18 Cst.)
- Academic freedom (Art. 20 Cst.)
- Freedom of artistic expression (Art. 21 Cst.)
- Freedom of assembly (Art. 22 Cst.)
- Freedom of association (Art. 23 Cst.)
- Protection against expulsion, extradition and deportation (Art. 25 Cst.)
- Right to property (Art. 26 Cst.)
- Economic freedom (Art. 27 Cst.)

Art. 36 Cst. Restrictions on fundamental rights

”[1] Restrictions on fundamental rights must have a *legal basis*. Significant restrictions must have their basis in a federal act. The foregoing does not apply in cases of serious and immediate danger where no other course of action is possible.

[2] Restrictions on fundamental rights must be *justified* in the public interest or for the protection of the fundamental rights of others.

[3] Any restrictions on fundamental rights must be *proportionate*.

[4] The *essence* of fundamental rights is sacrosanct.”

Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Popular initiative
(Art. 139 Cst.)

- Constitutional amendments
- 100’000 signatures within 18 months
- Formulated draft provisions or general proposal
- Double majority required: people and cantons



Referendum

Mandatory (Art. 140 Cst.)
- Constitutional amendments
- Double majority required

Optional (Art. 141 Cst.)
- Federal acts and certain treaties
- 50’000 signatures within 100 days
- Simple majority of the people sufficient

Elections
(Art. 149, 150 Cst.)

- Members of the National Council and of the Council of States

Number of popular initiatives voted on

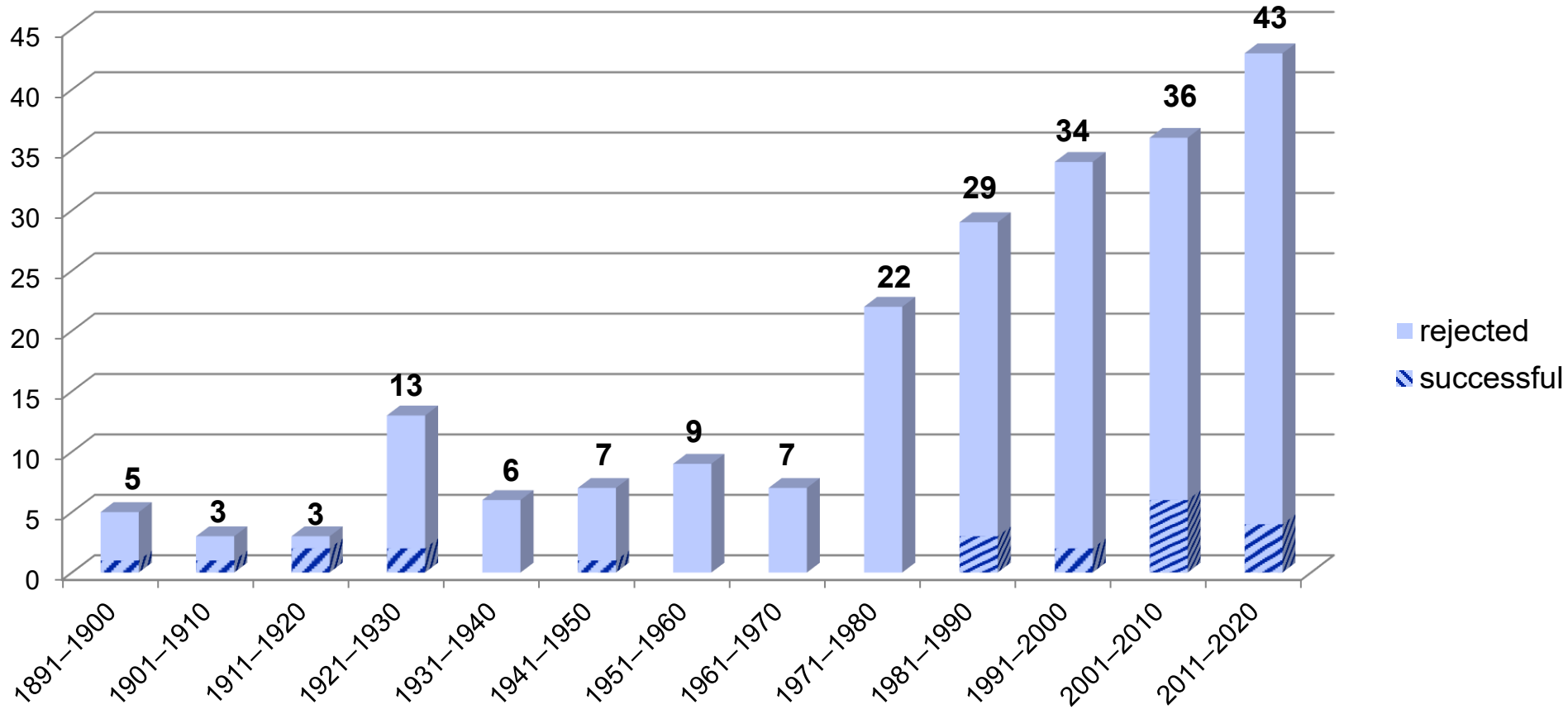


Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Federal Supreme Court



Criminal Law Appeal

Public Law Appeal

Civil and Criminal Law Appeal

Subsidiary Constitutional Appeal

Public Law Appeal



Federal Criminal Court



Federal Administrative Court



Civil and Criminal Courts of the Cantons



Administrative Courts of the Cantons

Limited Constitutional Review

Art. 190 Cst. Applicable Law

"The Federal Supreme Court and the other judicial authorities apply the federal acts and international law."

➜ Federal acts must be applied by courts even if they are unconstitutional

Aspects that minimize the lack of a constitutional review of federal acts:

- The Federal Supreme Court interprets (also) federal acts in conformity with the Constitution
- It is not prevented from stating that a federal act is unconstitutional
- It can, and does, review federal acts for their conformity with the ECHR

Table of Contents

– Short History
– The Swiss Constitution
– Federal Authorities
– Swiss Federalism
– Fundamental Rights
– Political Rights
– Judicial System
– Tension Direct Democracy – International Law

Initiative for the expulsion of foreign criminals



- 28 November 2010: Popular initiative for the expulsion of foreign criminals approved by a majority of the people and the cantons
- Art. 121(3)-(6) added to the Constitution:

Art. 121(3) Cst.

[3] Irrespective of their status under the law on foreign nationals, foreign nationals shall lose their right of residence and all other legal rights to remain in Switzerland if they:

a. are convicted with legal binding effect of an offence of intentional homicide, rape or any other serious sexual offence, any other violent offence such as robbery, the offences of trafficking in human beings or in drugs, or a burglary offence; or

b. have improperly claimed social insurance or social assistance benefits.

- 12 October 2012: The Supreme Court holds in BGE 139 I 16 that Art. 121(3)-(6) Cst.
  - are not directly applicable and therefore first need to be implemented by the legislator
  - do not take precedence over the principle of proportionality and the fundamental rights guaranteed by the Constitution or the guarantees of the ECHR
- 20 March 2015: The Federal Assembly implements Art. 121(3)-(6) Cst. by amending the Criminal Code: Art. 66a(2): «The court may by way of exception refrain from ordering expulsion if it would cause serious personal hardship to the foreign national…»
- 28 February 2016: The people and the cantons reject the «popular initiative for the effective expulsion of foreign criminals»

Mass immigration initiative



- 9 February 2014: Popular initiative “against mass immigration” approved by a majority of the people and the cantons
- Art. 121*a* added to the Constitution
- **Art. 121*a* Control of immigration**

  [1] Switzerland shall control the immigration of foreign nationals autonomously.

  [2] The number of residence permits for foreign nationals in Switzerland shall be restricted by annual quantitative limits and quotas. The quantitative limits apply to all permits issued under legislation on foreign nationals, including those related to asylum matters. The right to permanent residence, family reunification and social benefits may be restricted.
- 26 November 2015: The Federal Supreme Court holds in BGE 142 II 35 that the Agreement with the EU on the Free Movement of Persons takes precedence over any federal acts implementing Art. 121*a* Cst.
- December 2016: The Federal Assembly implements Art. 121*a* Cst. in a way that is compatible with the Free Movement Agreement (priority treatment for jobseekers who are registered with employment centres)
- 27 September 2020: The people and the cantons reject the popular initiative ”for restrained immigration”, which demanded the termination of the Free Movement Agreement

Thank you!

