

Foreword

There are many reasons for examining the notion of a referendum at the national level. Apart from elections, a referendum is one of the key procedures to enable citizens to influence political life. The smaller a democratic body, the greater the possibility of citizens' participation, and the smaller the need to give a decision-making power to the representatives. For a long time and throughout the world, Switzerland has been cited as a model of (semi-) direct democracy. As such, one is tempted to think, Switzerland attaches a particularly strong importance to referenda and has got a long-standing experience with the impact of their outcomes in socially controversial issues. Does Switzerland hence provide us with lessons to be considered when it comes to the topic of the present volume? "Yes, however...", may be the neutral Swiss reply.

Indeed, referenda are an important component of Swiss democracy. However, we need to precise that they only form one pillar of the direct-democratic instruments of our State's institutional infrastructure. In the Swiss context, a "referendum" is to be understood as an opposition to an amendment to the law being subject to a popular vote. Most often, the term refers to so-called "optional referenda", which need to gather the signatures of 50 000 citizens within 100 days in order to be subject to the national ballot. Besides "optional" referenda in article 139, the Swiss Constitution provides in specific cases (e.g. the adhesion to supranational communities, article 140) also for "mandatory" ones.

The referendum as a constitutional instrument was introduced in Switzerland as early as in 1874. Since then, 185 optional referendums have been held, 80 of which were unsuccessful. In addition to that, we need to mention that popular votes in Switzerland can also take the form of "initiatives". In contrast to referenda, these are civic proposals for constitutional changes which require the collection of 100 000 signatures within 18 months.

Although initiatives are historically less likely to be successful than referenda (until 2018, only 22 out of 209 popular initiatives have been accepted), they experience an almost inflationary use in recent decades. Moreover, their traditionally modest chances of getting approved by popular vote seem to get ever higher in recent

times. In fact, not less than 10 initiatives (i.e. almost half of all successful initiatives in Swiss history) were approved in the current, still relatively young millennium.

By definition, citizen's requests whose support reaches a minimum of 50 000 or 100 000 signatures should deserve to be described as "socially controversial issues". However, the increasing use of initiatives is not the only sign that such social controversies tend to be on the rise in Switzerland. Undoubtedly, we also observe changes in their nature.

One of them is e.g. the fact that in recent times, certain polarising social issues gathered support for not only one, but several popular votes and, consequently, are recurring topics of political campaigns. To mention some striking examples, crime and sexual abuse were subject to no less than three successfully adopted initiatives since the year 2000. Similarly, immigration proved to be a constant hot potato in recent ballots.

A second one arises from the legal nature of the mentioned direct-democratic instruments in Switzerland. In fact, unlike in other countries, the admissibility rules of referenda and initiatives in Switzerland include comparatively little restrictions in terms of content. Consequently, public debates and votes on even socially polarising issues are per se nothing unfamiliar to Swiss citizens. However, while popular initiatives are only meant to amend or introduce *constitutional* provisions, referenda aim at merely 'correcting' the legislator. Virtually, there is hence no direct-democratic instrument in the citizens' hands in order to introduce new ordinary laws. This leads to the somewhat paradoxical situation that trivial, but yet highly controversial issues, which perhaps would be better resolved on a statutory level, end up being the subject of constitutional public debates.

The questions of whether such anomaly is wishful or not for the future of Swiss democracy, and – if not – how it needs to be resolved, are open ones. Meanwhile the fact remains that polarising social issues will keep engaging Swiss public debates. The example of Switzerland for now shows how perceived legislative inaction in socially delicate issues may provoke and spark constitutional debates.

Chasper Sarott
Minister, Deputy Head of Mission
Embassy of Switzerland in Poland