

How they do it in Switzerland

Referendum proposals in Switzerland are drafted by those who call for the referendum but, if passed, have to be carried into effect by the Federal Swiss government.

So those winning a referendum against the advice of the government, as has happened for example in the recent minarets' referendum and the referendum on limiting the number of migrants, have to ensure that the result is actually effected.

Of course, in Switzerland the federal government can, and will, implement referendum results even if it disagrees with the result.

Three matters are of interest. These are, first, the clarity of plan which was behind the majority vote. Second, there is the method as to the meshing in of the referendum result with existing laws and treaties. Third, there is sometimes a long stop included in the referendum proposition.

The minaret vote was straightforward. The referendum was a clear instruction from the people – no more minarets – and the Federal Swiss government did not have to take account of other matters.

In the case of the referendum of April 2014 which approved limiting the number of migrants by national quotas, this also included a recognition that Switzerland would have to renegotiate its bilateral accord with the EU on the free movement of people by 2017 or else revoke it. The Foreign Minister, Didier Burkhalter, said: *"The people have decided and the government will implement the decision for the best of the country."* The EU objected strongly and threatened to end all other bilateral agreements, as it was entitled to do by the bilateral Swiss-EU agreements. The current position of the EU is to demand Switzerland call a new referendum by the end

of 2016. So, in this referendum case, there has not yet been an outcome and the vote of the electorate has not been implemented. In September, on a visit to Berne, Angela Merkel asked for negotiations to continue. (One should note that the referendum endorsed a limitation on the number of asylum seekers as well.)

All three aspects of Swiss referendums are, therefore, relevant to the UK EU referendum. These are the clarity of argument and plan behind the winning vote, the meshing in of the result with existing agreements and a long stop to actually enforce the result.

[The exact wording of the Swiss referendum is attached as an appendix.]

Moreover, Swiss news reports *"The bid to seal an agreement has been stalled by EU member Britain's similar demand to limit immigration from within the EU, making it hard for the EU to offer the preferential deal for Switzerland before it has settled matters with Britain."*

The Swiss government has made it clear on 4th December 2015 that it takes the referendum result seriously and has taken action.

"If there is really no solution ... we would be ready for a suspension of a part or all of the bilateral agreements." Foreign Minister Didier Burkhalter told a news conference. Also, Swiss news reports *"The government has asked its justice department to draft unilateral curbs on immigration by March 2016 in the event that there is no breakthrough."*

Thus the critical path outlined by the referendum proposers is being followed in Switzerland.

APPENDIX

Initiative populaire fédérale 'Contre l'immigration de masse'

I

La Constitution¹ est modifiée comme suit:

Art. 121 Titre (nouveau) Législation dans le domaine des étrangers et de l'asile

Art. 121a (nouveau) Gestion de l'immigration

1 La Suisse gère de manière autonome l'immigration des étrangers.

2 Le nombre des autorisations délivrées pour le séjour des étrangers en Suisse est limité par des plafonds et des contingents annuels. Les plafonds valent pour toutes les autorisations délivrées en vertu du droit des étrangers, domaine de l'asile inclus. Le droit au séjour durable, au regroupement familial et aux prestations sociales peut être limité.

3 Les plafonds et les contingents annuels pour les étrangers exerçant une activité lucrative doivent être fixés en fonction des intérêts économiques globaux de la Suisse et dans le respect du principe de la préférence nationale; ils doivent inclure les frontaliers. Les critères déterminants pour l'octroi d'autorisations de séjour sont en particulier la demande d'un employeur, la capacité d'intégration et une source de revenus suffisante et autonome.

4 Aucun traité international contraire au présent article ne sera conclu.

5 La loi règle les modalités.

II

Les dispositions transitoires de la Constitution sont modifiées comme suit:

Art. 197, ch. 92 (nouveau)

9. Disposition transitoire ad art. 121a (Gestion de l'immigration)

1 Les traités internationaux contraires à l'art. 121a doivent être renégociés et adaptés dans un délai de trois ans à compter de l'acceptation dudit article par le peuple et les cantons.

2 Si les lois d'application afférentes ne sont pas entrées en vigueur dans les trois ans à compter de l'acceptation de

l'art. 121a par le peuple et les cantons, le Conseil fédéral édicte provisoirement les dispositions d'application nécessaires par voie d'ordonnance.

1 RS 101

2 L'initiative populaire ne vise pas à remplacer une disposition transitoire en vigueur de la Constitution: c'est pourquoi le chiffre de la disposition transitoire relative au présent article ne sera fixé qu'après le scrutin, en fonction de l'ordre chronologique dans lequel les différentes modifications constitutionnelles auront été acceptées. La Chancellerie fédérale procédera aux adaptations nécessaires avant publication au Recueil officiel du droit fédéral (RO).

<https://www.admin.ch/ch/f/pore/vi/vis413t.html>/17.11.2015