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# A clear judgement with unclear consequences

A popular vote has been annulled by the courts in Switzerland for the very first time. Is this a slap in the face for the Federal Council, or proof of the power of democracy? Opinions are divided, and the consequences of the judgement are unclear.

MARC LETTAU

The vote was on an issue that affects high-earning married couples. They pay more federal tax than unmarried couples who earn exactly the same income. This 'marriage penalty' has been a political issue for years. The Christian Democrat People's Party (CVP) attempted to abolish the marriage penalty with their rather clumsily-named referendum "For marriage and family – against the marriage penalty". But the initiative failed at the ballot box in 2016 when 50.8 percent voted against it.

## More than close

Just 55,000 votes divided the yes and no camps, so it was a narrow defeat. However, the figures that the Federal Council quoted before the vote were incorrect. It claimed that the marriage penalty affected only 80,000 double-income married couples. Later it conceded that it had fundamentally miscalculated – by a factor of five. It turned out that 450,000 married couples are fiscally disadvan-

**After the sweetness of the wedding cake comes the bitter taste of the fiscal marriage penalty for solvent double-income married couples.**

Photo: Keystone



taged. On the basis of this admission, the CVP eventually submitted a voting complaint.

## Historical significance

The Federal Supreme Court judgement on this matter on 10 April 2019 is of historical significance. The court upheld the complaint and annulled the referendum decision. This is ground-breaking – the first annulment of a national referendum result since the foundation of the modern Swiss federal state in 1848. The federal judges deemed the misinformation of the Federal Council to be "grave", and a "shocking infringement" of the freedom of vote. In light of this, it was "probable" that the voting results had been distorted, they ruled.

"A slap in the face for the Federal Council" was the title of the article published by the "Neue Zürcher Zeitung" after the judgement. In contrast, the newspapers of the Tamedia Group viewed the judgement as a seal of approval for Swiss democracy, as it has strengthened the rights of committed citizens vis-à-vis the administrative apparatus.

## What now?

Will this initiative be placed before the people once more? That is by no means mandatory. The CVP itself is not interested in a further referendum. Opinions are divided within the party on the text of the initiative, as it dictates a very narrowly formulated definition of marriage as "legally regulated cohabitation between a man and a woman". That goes too far for the CVP members who are open to same-sex marriage.

Against this backdrop, the initiators hope to abolish the marriage penalty through legal channels. That would make a second referendum on the initiative obsolete. This hope is not unfounded as one month after the judgement, the National Council approved a cantonal initiative from the canton of Aargau. It demanded that the discrimination against married couples not only be ended with regard to taxes but also for social insurance. Upon retirement, they receive a married couples' pension which is lower than two individual pensions for a couple that lives together without a marriage licence. That is just as disturbing as the fiscal marriage penalty.