



Institut suisse de droit comparé
Schweizerisches Institut für Rechtsvergleichung
Istituto svizzero di diritto comparato
Swiss Institute of Comparative Law

10 May 2016

Dorigny, Lausanne

Rencontres informelles de l'Institut suisse de droit comparé

The Legal Subject in the ECtHR's Religious Symbols Jurisprudence

Issues of Legitimacy and Constitutionalism from a Comparative Perspective

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Tuesday, 10 May 2016, 12:00

Swiss Institute of Comparative Law, Voyame Room

The religious symbols case-law of the European Court of Human Rights (ECtHR) is gaining momentum in current legal discourse in terms of the constitutional questions that it raises. As part of this discourse, the concept of legal subjectivity is of particular importance, which further brings forward issues of legitimacy and constitutionalism for Europe. The present research touches upon these issues by looking at the headscarf controversies around Europe and the crucifix case in Italy from a comparative approach. In answering how the legal subject is constructed, the research addresses the following questions: (i) which legal doctrines does the Strasbourg Court employ; (ii) how are these interpreted in relation to questions of legal subjectivity from an intercultural perspective; (iii) whether this conception of the legal subject is legitimate or not. The main hypothesis is that the Court conceives the legal subject through the lens of an essentialist approach and upholds an understanding of constitutionalism where people are treated as being part of a homogenous society and not of a society of equals. By contrast, a more contextual account of constitutionalism is defended where the legitimate legal subject is established as having an equal stake in the configuration of the political community within a democracy not of sameness, but rather, of equality.

Free Admission

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