

EUREL Conference 2016 – Governance and Religion in Europe

Submission for Panel 4: Religion in Legislation and Law Enforcement

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Title: Between Law and Politics: Muslim Religious Practices in Swiss Public Schools

Abstract: Historically Switzerland has been known for its humanitarian tradition as well as its progressive approach towards civil liberties, especially the freedom of religion. Currently, the country is confronted with a strong political movement that aims at restricting these civil rights of certain groups, in particular Muslims. This led to several limitations to such practices, some of them even approved by popular vote. As an example, the prohibition of the construction of minarets, introduced by means of a popular initiative and now enshrined in article 72 of the Swiss Federal Constitution, can be named. From a legal point of view, the question arises which role this shift in politics plays in the Swiss Federal Tribunal's interpretation of Muslims' right to freedom of religion. The analysis of such issue seems particularly interesting because the members of the tribunal are chosen according to their political affiliation. Focusing on the field of public education, this paper examines how decisions on Muslims' complaints alleging an unjustified restriction of their religious practices are influenced by the political environment. In order to do so, a first part is dedicated to present the theoretical foundations underlying the relationship between law, politics and the Swiss Judiciary. A second part then analyses the evolution of the jurisprudence with regard to limitations of Muslims religious customs in public schools and identifies the underlying tendencies. Subsequently, these findings are contrasted with the coinciding political developments. Such comparison allows for the conclusion that although to a certain extent influenced by the change of attitude towards Muslims, the judiciary in Switzerland sets boundaries for restrictions of religious practices. In order to guarantee social cohesion, it would however be desirable if Muslims' right to freedom of religion would experience a stronger protection against political influence. (290 words)

Biographical statement: Fabienne Bretscher holds a Master degree with specialisation in Transnational Law of the University of Basel. Currently she is a PhD student and research fellow in International Law at the University of Zurich. Her PhD research is situated in the area of the international system of human rights protection and examines the practice of the European Court of Human Rights and the United Nations Human Rights Committee with regard to immigrants' and religious minorities' right to freedom of religion. (70 words)