

Habilitation

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Political Parties – Associations between public and private law
A comparison between Swiss and Belgian law

Swiss political parties are organized as associations according to the Civil Code. However, they must simultaneously respect not only the obligatory rules of the law of associations, as regulated in the Civil Code, but also their own statutes and the rules of public law at the federal, cantonal and municipal levels.

Most Belgian political parties are organized as “associations de fait”. Accordingly, they do not acquire legal personality and the rules of the law governing associations without economic purpose do not apply. The Belgian Constitution does not even mention political parties. But the Belgian political parties do have to respect their own statutes as well as a large number of detailed norms concerning party financing and the respect for human rights by both the party members and the political parties themselves.

This study compares the following aspects of the political parties in Switzerland and Belgium: the legal form of the political parties; the organization of the political parties; the relation between the local and regional sections of the political parties and their federal unit; the rights and duties of party members; the decision-making process from the bottom up; and the implementation of decision-making from top to bottom.

This comparison of Swiss and Belgian law illustrates the different regulations of the two countries; it also answers the question of to what extent these different regulations depend on historical and factual developments. Several recently published investigations by political scientists, concerning the organisation and activities of the political parties in Switzerland and Belgium, are also taken into consideration.

The emphasis of this study is on the private law of Switzerland and Belgium. Nevertheless, the norms of the constitution and the other rules of public law regulating the political parties of each country are also presented. This study illustrates the problems that can arise when the norms of both public law and private law regulate topics in the same legal sphere. One of the specific aims of this study is to explain the interdependence of public and private law.