Exploring constitutionalism and counter-costitutionalism in the system of the ECHR : The constitutionalist attitude of the ECtHR and its backlash

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The European Court of Human Rights (ECtHR) in its case law has contributed to the identification of the core concepts and values laying behind the legal system of the European Convention of Human Rights, thereby enhancing an incremental process of constitutionalization of this same system. However, the constitutional approach pursued by the ECtHR may ignite as side-effect a counter-constitutionalism discourse at the domestic level. In other words, the tendency of the European Court to impinge on issues relevant for the constitutional identity of the ECHR States Parties may generate a 'backlash' against the European Court authority and the legal regimes it represent. This potential risk is exemplified by the confrontation involving the ECtHR, the UK Supreme Court and the Russian Constitutional Court over the same issue of the deprivation of detainees' right to vote. The lecture is intended to explore and assess both the threads of dialogue and of defensive hostility characterising the current relationship between the ECtHR and the (supreme) domestic courts of States, as well as to assess the impact of these phenomena on the legal tools and techniques (ie, margin of appreciation, equivalent protection, consistent interpretation) elaborated to manage such a complex relationship.

About the speaker:

Maurizio Arcari is professor of International Law at the University of Milano-Bicocca, School of Law, where he teaches the general course of International Law, the advanced courses of UN Law & International Peacekeeping, EU Common Security and Defense Policy, and also serves as coordinator of the PhD Course in Law. His research interests cover topics such as Statehood, Recognition and Non-recognition in International Law, Constitutionalization and Fragmentation of International Law, the law of Collective Security, the law of State Responsibility, Human Rights Law, Transboundary Resources Law and International Procedural Law, on which he has extensively published. He was visiting professor at the University of Nice, Institut du Droit de la Paix et du développement (2018), visiting scholar at the University of Glasgow School of Law (2015), and Director of studies for Diploma candidates and Advanced Students at the Winter Course of International Law, Hague Academy of International Law, The Netherlands (2019). He is a member of the Editorial Board of the Italian journals “Rivista di diritto internazionale” and “Diritti Umani e Diritto Internazionale”, of the scientific board of the “Polish Yearbook of International Law” and Editor-in-chief of the E-journal “QIL-Questions of International Law”.

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