

The National Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence

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Abstract

In consideration of deeply rooted historical and cultural differences among the member states, and in order to sustain diversity of values, the European Court of Human Rights developed the doctrine of the national margin of appreciation. This doctrine states that in some special areas, particularly where there is no consensus among member states, the Court should give way to a member state's discretion in enacting or enforcing its laws. In doing so, it attempts to find a balance between the universality of human rights and cultural relativism. The margin of appreciation doctrine has grown in usage because it is seen to be a flexible tool with which to integrate competing interests within a system that divides power between international and national authorities. It is a natural evolution of the principle of subsidiarity, which means that in order to achieve democracy and efficacy, lower levels of government should rule. In our case, this is because national authorities, which are in direct and continuous contact with their people, and are therefore better able to know, assess and judge issues of national concern than more remote levels of governance. In our case, the European Court of Human Rights plays a role subsidiary to that of member states, standing aside and supervising; stepping in only in need. This paper probes the origin and development of the national margin of appreciation doctrine applied by the European Court of Human Rights, and assesses the costs and benefits of such an application.

Key Words: national margin of appreciation doctrine, universality of human rights, cultural relativism, the principle of subsidiary, derogation in emergency