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Contextual Analyses of "The Doctrine of a Margin of Appreciation" in the Frameworks of the European Court of Human Rights and the British Legal System

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Abstract
The European Convention on Human Rights (ECHR) adopted the approach of "Margin of Appreciation", to keep the Human Rights concept intact throughout the Europe; a tool which is coping well with the issue of diversity. This article examines the rationalization of the doctrine "margin of appreciation" in the framework of "The European Court of Human Rights" (ECtHR) and British Legal System. Furthermore, a critical analysis of the doctrine is undertaken to understand how it helps to develop, improve and enhance the universal concept of human rights while maintaining the diverse nature of independent states. Hence, the research explains the extent of the "Margin of Appreciation" given to states by the ECHR.

Key words: Margin of Appreciation, subsidiarity, proportionality, freedom of expression.

Introduction

Despite having significant "cultural and ideological diversity", Europe has tried to protect human rights as a relatively unified whole.[1] The European

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[1] M. Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2013).

Convention on Human Rights (ECHR) has made a minimum level to be maintained between the universal standard of human rights and the diverse cultures embraced by each contracting state in Europe.[2] The ECHR is the essence of codified set of core European rights. Notably, "the doctrine of margin of appreciation" was developed by the European Court of Human Rights (ECtHR) as an interpretational tool which means that the court can essentially define what is important for each society which is then determined by the judge at the local level.[3] This tool also determines "whether the core rights envisaged in European Convention of Human Rights are violated within the framework of European diverse system."[4]

The margin of appreciation doctrine works as a saviour in threatening situations where the security of the State is involved. It has since been developed within the European system into one of the major tools of ECtHR for obliging diversity in Europe. This principle always takes into consideration the will of the democratic majorities, while keeping in view the rights elucidated within the ECHR.[5] The doctrine in this application relies on derogation provisions mentioned within the specific articles, and its intention is more to determine a long-term balance among conflicting domestic social interests and less to do with state emergency. The margin of appreciation is primarily used to signify provisional state derogations of rights drawn in the ECHR, which were only allowed at the time of emergency by the State which derogated.[6] These emergency situations are usually related to the risk of state security.

The purpose of the doctrine signifies that every society should be granted certain independence in resolving inherent conflicts between the "rights of individual" and the "interests of the society". It further delineates that the "protection of the rights" stated in the ECHR are secondary to the national

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[2] J. Donnelly, *Universal Human Rights in Theory and Practice* (New York: Cornell University Press, 2013).

[3] Yonatan Lupu and Erik Voeten, "Precedent in International Courts: A Network Analysis of Case Citations by the The ECtHR", *British Journal of Political Science* 42 (2012): 413.

[4] A. Legg, *The "Margin of Appreciation" in International Human Rights Law: Deference and Proportionality* (Oxford: Oxford University Press, 2012).

[5] D. L. Donoho, "Autonomy, Self-Governance, and the Margin of Appreciation: Developing a Jurisprudence of Diversity within Universal Human Rights," *Emory Iinternational Law Review* 15 (2001): 451.

[6] Lawless v. UK, (ECtHR 1961), Ireland v. UK, (ECtHR 1978), Brannigan & McBride v. UK, (ECtHR 1993).

security which is provided to the contracting states.[7] Fundamentally, the doctrine of margin of appreciation refers to the ability of the state to assess the factual situations and apply the provisions in the convention. The significance of the Convention lies not only on the rights it protects, but also in the protection system. This has been established in the "The ECtHR" to "investigate alleged violations and to ensure that states fulfil their obligations under the convention."[8]

The margin of appreciation and the ECtHR

The ECtHR has acknowledged the "doctrine of margin of appreciation" as mentioned previously. When the rights between the "common good of the society" and the "interest of the individual" are confined, it allows the member states of the convention to strike a balance.[9] According to this principle, decisions regarding the proper and effective application of the convention give more privilege to the state authorities than an international judge, which means that the local authorities are in a better position to take cognizance of the case. The power "to give an opinion on the exit content as well as on the *necessity* of a restriction or penalty" are further authorised to the state.[10] The doctrine of margin of appreciation also reflects the doctrine expression of principle of good faith mentioned in "Article 31 of the Vienna convention of the law of treaties that gives the state latitude to address difficult cases."[11] A related understanding is that the national authorities would be better placed to evaluate what is proportionate in the specific circumstances.[12] The margin granted is not always equally extensive though. Relevant factors in this respect include the nature of the right and the degree to which there would be a European consensus in the matter.[13] While the court tends to emphasize that doctrine for states must go together within

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7 Lupu and Erik Voeten, "Precedent in International Courts: A Network Analysis of Case".

8 Laurence R. Helfer and Anne-Marie Slaughter, "Toward A Theory of Effective Supranational Adjudication." *Yale Law Journal* (1997): 273.

9 M. Tumay, "The European Convention on Human Rights: Restricting Rights in a Democratic Society with Special Reference to Turkish Political Party Cases", Ph. D Thesis (University of Leicester, UK, 2006).

10 H. C. Yourow, *The "Margin of Appreciation" Doctrine in the Dynamics of European Human Rights Jurisprudence* (Dordrecht: Martinus Nijhoff Publishers, 1996).

11 L. Crema, "Disappearance and New Sightings of Restrictive Interpretation(s)", *The European Journal of International Law* 21 (2010): 681.

12 E. Benvenisti, "The Margin of Appreciation, 'Subsidiarity' and Global Challenges to Democracy", *Journal of International Dispute Settlement* 9 (2018): 240.

13 Y. Arai-Takahashi, *The "Margin of Appreciation" Doctrine and the Principle of Proportionality in the Jurisprudence of The ECHR.* (New York: Intersentia, 2001).

the European supervision, it is obvious that the more extensive the doctrine of margin of appreciation the court leaves to states, the more insignificant its own supervision becomes. It may also be clear that the different relevant factors might not necessarily point to the same direction, and that different evaluations are arguable of whether or not or to what extent there is a European consensus.

Margin of appreciation in reference to ECHR

The ECtHR developed the doctrine of the margin of appreciation on the basis of rights mentioned in the Convention and provisions of derogation in Article 15. The articles in the convention describe the "fundamental right which is followed by a paragraph that is the subject to a limitation. This doctrine has also been called a room for manoeuvre"[14] and a breathing space[15]. Although the term margin of appreciation which is neither written in the convention nor mentioned in its drafting history, it was first termed in a case *Greece v. UK, 1959*, which related to a complaint made by Greece regarding the UK's impugned administrative actions in Cyprus. In the case, the United Kingdom had taken the plea of Article 15 of the ECHR. According to the procedure, first the complaint was taken to the commission, which then made a recommendation to the ECtHR. In reporting to the court, the commission stated that "the Government should be able to exercise a certain measure of discretion in assessing the extent strictly required by the exigencies of the situation".[16] The first extended debate on this doctrine appeared before the Court in "Lawless v. Ireland" in which it was claimed on behalf of G.R Lawless that the Republic of Ireland misused the powers of preventive detention violating the Article 5 and 6 of the convention. Ireland took the plea of Article 15 in defence and declared it as a necessary measure to provide security against the threat of terrorism from the Irish Republican Army (IRA). In this case, the commission president Sir Humphrey Waldock argued that in the Lawless case the respondent state had certain latitude in defining the threshold "of any public emergency which threatens the life of the nation"[17], and it is also the state that had to establish the policy for how much

[14] S. C. Greer, "The Margin of Appreciation: Interpretation and Discretion Under the European Convention on Human Rights" (Strasbourg: Council of Europe, 2000)

[15] Yourow, *The "Margin of Appreciation" Doctrine in the Dynamics of European Human Rights*.

[16] J. Maguire, "Internment, the IRA and the Lawless Case in Ireland: 1957-61", *Journal of the Oxford University History Society* 1 (2004): 1.

[17] Ibid

derogation was required. The court upheld the Irish government's power to use preventive detention to curb the violence of the IRA.

This doctrine also outlines the limitations and status of the ECtHR. The ECtHR refers to the judgment of national authorities because the convention is not a "National Bill of Rights" but is it an international treaty. Hence, it is essential to understand that the National Authorities are in a better position to respond to historic, culture or societal needs.[18] The doctrine actually relates to the principle of proportionality, which means that the state actions should signify the legitimate restrictions on the "conventional rights and fundamental freedoms."[19] The real notion of this doctrine is to "give enough space to the national authorities to evaluate what is proportionate in the specific circumstances."[20]

However, the doctrine "margin of appreciation" has been used beyond emergency cases, meaning that the court recognized circumstances other than those referred to in Article 15. This was the case with *Iversen v. Norway*[21] which concerned a grievance regarding forced labour mentioned in Article 4. Later on, this principle enhanced to the right of education[22], as defined under Article 2 of Protocol 1, further to the right to correspondence with a solicitor for a prisoner[23] under Article 5 to Article 8, and then further to the right to correspondence of detained vagrants[24] under Article 8. This reveals that the convention has given a subsequent portion of "margin of appreciation" to the states to govern and control the situations according to their own public policies across a range of articles. It is pertinent to mention here that according to Articles 5 and 6, the court has granted a much narrower "margin of appreciation", with provisions protecting security, liberty, and the right to a fair trial.[25] This is because Articles 5 and 6 are

[18] Helfer and Anne-Marie Slaughter, "Toward A Theory of Effective Supranational Adjudication".

[19] J. Schokkenbroek, "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine in the Case-Law of the European Court of Human Rights," *Human Rights Law Journal* 19 (1998): 20

[20] L. Henkin, "That S Word: Sovereignty, and Globalization, and Human Rights, Et Cetera", *Fordham Law Review* 68 (1999): 1.

[21] Iversen v. Norway (ECtHR , 1963).

[22] Belgian Linguistic Case (ECtHR 1967-68).

[23] Golder v. UK (ECtHR, 1975).

[24] De Wilde, Oams & Versyo (Vagrancy case) v. Belgium (ECtHR 1979).

[25] Greer, "The Margin of Appreciation: Interpretation and Discretion".

drafted with great detail, specifically, leaving less room for varying government interpretations and applications.[26]

The landmark case of Handyside reflecting the significance of the "doctrine of appreciation"

The "margin of appreciation" has become a vital part of the ECtHR. The Court has applied this doctrine in over 5000 cases.[27] In 1976, *Handyside v United Kingdom*[28] was a milestone case with regard to the doctrine's development. It concerned the publication of "The Little Red Schoolbook". The book was controversial because it encouraged young readers to smoke marijuana and experiment with their sexuality. At one point, police intervention was required due to the high number of complaints received. The books were confiscated and the premises of the publisher were searched, which the local Court had sentenced for retailing. Handyside, the author, took the case to the ECtHR claiming that the confiscation of his book and his conviction were both a violation of his right under Article 10 of the ECHR "which protects the right to freedom of expression". The verdict in favour of the UK Government was given after ECtHR took cognizance of the case but, by raising the "accommodation clause" of Article 10, the British Government sought to justify its actions. Though the court also admitted the violation of right, states actions were visibly justifying the restriction on the book because it was "necessary for the democratic society" and in addition for the protection of the morals too.[29]

The crucial factors of the Handyside case were:

- Are the actions of excluding and confiscating the books along with the conviction of the publisher for possession of obscene books in accord with the "limitation of freedom of expression" justified?
- Is it justifiable that the authorities were claiming that the assertion of Handyside's conviction was "necessary in a democratic society" for the "protection of morals"?

[26] Brems, E. *Human Rights: Universality and Diversity*. (The Hague: Martinus Nijhoff Publishers, 2001)

[27] Greer, "The Margin of Appreciation: Interpretation and Discretion".

[28] Handyside v United Kingdom (ECtHR 1979).

[29] P. Birkinshaw, "Freedom of Information and Openness: Fundamental Human Rights," *Administrative Law Review* 58 (2006): 177.

- Whether "substantial evidence" could be found showing that the UK's obscenity laws match the "prescribed by law" requirement, the language used in article 10(2) of the ECtHR.
- Whether the aim of the United Kingdom was to protect the morals mentioned in Article 10(2). Whether the UK's actions were "necessary" to further that aim was one of the key questions before the ECtHR, since it repatriated that the "Convention leaves to each Contracting State, in the first place, the task securing the rights and freedoms it enshrines."[30]

Even though the book could be published in many other member states, the Court concluded in para 48:

> It is impossible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterized by a rapid and far reaching evolution of opinion on the subject.

Finally, the court gave its verdicts as follows:

> The National State was afforded a degree of flexibility in the application of the article and was entitled to conclude that the aim of the seizure was to protect morals. The protection of morality was encompassed in the notion of the general interest in which a state could control the use of property; therefore, had not been a violation of art 1 of the First Protocol to the Convention.

Hence, "the ECtHR held in favour of the United Kingdom due to the young age of the children the book was targeting."[31]

Guiding principles of "margin of appreciation" and the Handyside Case

To apply and give recognition to this doctrine, the court has identified certain factors that it believes bring precision and "clarity to its application of the

[30] E. Barendt, "Freedom of Expression in the United Kingdom under the Human Rights Act 1998," *Indiana Law Journal* 84 (2009): 851

[31] Schokkenbroek, "The Basis, Nature and Application of the Margin-of-Appreciation Doctrine."

doctrine." It relies on three principles: a protected right, balancing the importance of the right with the importance of the restriction, and European consensus on the matter before the court.[32]

The first factor, which is the protected right, is taken into consideration by the court as an essential object in deciding the latitude of the doctrine; at the time of analysing the importance between the interest of the community and individual liberty.[33] As already discussed, in the Handyside case, the court confirmed the importance and continuation of freedom of expression; nevertheless, it endorsed the State authority's decision to confiscate the books which were deemed to be against the morals of their society. The court in this specific case recognised the wide range of "margin of appreciation" by denoting that the limitations on the rights must be proportionate to the legitimate aim pursued. A similar verdict was delivered in the *The Sunday Times v United Kingdom*[34], when the court reiterated that the margin of appreciation must be allowed when the right is considered fundamental and the action taken by the State is imminent. Furthermore, in order to measure the latitude of this doctrine, "the court weighs the importance to the individual of the right at issue against the importance of the aim pursued by the state in limiting that right."[35] In this scenario, the court has also recognised certain context which can *narrow* or *widen* the scope of this doctrine.[36] As defined by the court, a "narrower margin of appreciation" can be applied when the issue of free political speech amounting to hate is addressed by the court. Therefore, the court struck down a sodomy law in the Dudgeon case stating that:

> The present case concerns a most intimate aspect of private life. Accordingly, there must exist particularly serious reasons before interferences on the part of the public

[32] L. R. Helfer, "Consensus, Coherence and the European Convention on Human Rights," *Cornell International* Law *Journal* 26 (1993): 133.

[33] Y. Shany, "Toward a General "Margin of Appreciation" Doctrine in International Law?" *European Journal of International Law* 16 (2005): 907.

[34] The Sunday Times v. United Kingdom (ECtHR 1979).

[35] A. McHarg, "Reconciling Human Rights and the Public Interest: Conceptual Problems and Doctrinal Uncertainty in the Jurisprudence of the European Court of Human Rights," *The Modern Law Review* 62 (1999): 671.

[36] Y. Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the European Convention of Human Rights* (New York: Intersentia, 2001).

> authorities can be legitimate for the purpose of paragraph 2 of Article 8.[37]

The court has identified other circumstances in which the "margin of appreciation" is wider, for example, "in matters related to national security." In *Klass v. Germany*, the court applied the wider margin of appreciation to Germany's heightened use of surveillance to combat terrorism. Similarly, in *Leander v. Sweden*, the court also applied a wider margin of appreciation in approving Sweden's practice of keeping records on members of leftist political organizations and using the records when those members applied for government jobs.[38] Once again the court was convinced that national security concerns demanded a wide margin of appreciation.

Thirdly, the court considers whether there is a European consensus on the matter along with weighing the right at issue with the government. This has become "one of the most important factors when determining the scope of the margin of appreciation."[39] Hence, more diversification in the rules and regulations of the member states to the Council of Europe indicates that there should be a significant margin of appreciation; however, the more they are in agreement, the lesser the margin of appreciation. The reason for this is if there is a solid case against the specific action of the state, that action should not be considered important for a democratic society. Hence, in *Norris v. Ireland* (1998), the court "invalidated Ireland's sodomy law under Article 8 of the convention since the majority of member states no longer prohibited sodomy."[40] In *Rees v. United Kingdom* ,where "the determining factor was the lack of consensus on how public records should register the sex of an individual who has undergone a sex change operation,"[41] the court held that Article 8 was not violated by the United Kingdom when refusing to give permission to a transsexual to change the sex indicated on a birth certificate. The court usually applies this doctrine to find out if the legitimate aim or aims pursued by the restrictions on the rights and freedoms are proportionate. In considering the interests of the community, it is commonly

[37] Dudgeon v. United Kingdom (ECtHR 1981).

[38] Leander v. Sweden (ECtHR 1987), Klass and others v. Germany (ECtH 1978).

[39] Yourow, *The "Margin of Appreciation" Doctrine in the Dynamics of European Human Rights Jurisprudence*.

[40] Norris v. Ireland (ECtHR 1998).

[41] Rees v. United Kingdom (ECtHR 1986).

observed that the implication of margin of appreciation is usually wider when the rights of others are at stake.[42]

The European Consensus also played an essential part in portraying the court's evaluation, to stop or proceed as a common ground, in the legal system of the member state of the Council of Europe.[43] Making wider or narrower the scope of the margin of appreciation has been its most important function.

Circumstantial analyses of margin of appreciation

The primary idea signifies to the margin specified to the national authorities, keeping in view the relationship between the ECtHR and the national authorities. Therefore, this notion is firmly attached with the principle of subsidiarity which notion can be addressed further under the two elements; deference to local legitimacy and lack of expertise or knowledge on the part of the international court.[44]

Conversely, Letsas considers that the substantive idea of the margin of appreciation indicates that the national authorities should assess the facts of the case carefully to make the appropriate uniformity between an individual's rights and the interest of the society.[45] In many cases, this balancing exercise has been treated as a principle. In the universal conception of the ECHR, this necessity is viewed as absolute. The standard policy of the "doctrine of margin of appreciation" comes to conclusion in four procedures:[46]

- Ascertainment of certainty and fact-finding procedures.
- Assessment methods of the parameters of human rights norms.

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[42] Schokkenbroek, "The Basis, Nature and Application of the Margin-of-Appreciation".

[43] H. D. Waele, "The Role of the European Court of Justice in the Integration Process: A Contemporary and Normative Assessment", *Hanse Law Review* 6 (2010): 3.

[44] S. C. Greer, "Balancing" and the European Court of Human Rights: A Contribution to the Habermas-Alexy Debate", *The Cambridge Law Journal* 63 (2004): 412.

[45] G. Letsas, "Two Concepts of the Margin of Appreciation", *Oxford Journal of Legal Studies* 26 (2006): 705.

[46] A. Mowbray, "A Study of the Principle of Fair Balance in the Jurisprudence of the European Court of Human Rights", *Human Rights Law Review* 10 (2010): 289.

- Evaluation of the means to achieve desired social ends, including "the process of balancing between an individual's right and the public aims envisaged by specific human rights norm".[47]
- Evaluating in equilibrium the two challenging rights and freedoms. The second procedure signifies the rise to judicial discretion and intently includes a significant question of interpretive contradictions over a human rights standard.

The practice of fact finding and ascertainment of reality

In light of the related facts, the first phase for the application of the doctrine becomes evident in relation to the latitude allowed to the local authorities in relation to judge and determine facts that are pertinent. Behind the application of the "subsidiarity" principle, there is a "qualified advantage of local administrative authorities in fact-findings and corroborates the utilitarian calculation".[48] The most important use of this doctrine is when there is an evaluation of a state emergency that authorises the State to invoke the derogation clause mentioned in Article 15. It is not obvious that the proclamation of this phase is "value-free" or "ideologically neutral or free"[49], is debatable.

Margin of appreciation as a custodian of Human Rights and the protectorate of society

Furthermore, while evaluating the margin of appreciation's application as the most apparent and stable, it is "frequently evidenced in practice in the case law of the ECHR where the ECtHR has sought to balance Convention rights with legitimate governmental concerns and the existence of a margin of appreciation"[50] that States retain when legislating for legitimate concerns. So, for example, in the case of *Sporrong and Lönnroth v. Sweden*, the court "emphasised in its ruling that even where contracting states enjoy a wide margin of appreciation in the context of implementation of their town-planning policy." The Court further articulated that;

The Court must determine whether a fair balance was struck between the demands of the general interest of the community and the requirements of

[47] Shany, "Toward a General "Margin of Appreciation" Doctrine in International Law?".

[48] Ibid.

[49] Ibid.

[50] E. Benvenisti, "The Margin of Appreciation, "Subsidiarity" and Global Challenges to Democracy", *Journal of International Dispute Settlement* 9 (2018): 240.

the protection of the individual's fundamental rights. The search for this balance is inherent in the whole of the Convention and is also reflected in the structure of Article 1.[51]

The concept that the national authorities may have discretion to ascertain the methods (types, appropriateness, proportionality and so on), in order to achieve social objectives, in specific factual circumstances,[52] has been referred to by Greer as "structure balancing" between interest of the society and the rights of individual or can also be called rectifying clashes among rights.[53]

It is an obligation of the ECtHR to deliver contemplated judgements that can legitimize specific results of measuring interests in large that are vital to the Convention's "Constitutional" order against the rights of individual.[54] The Court's need to make the hard choice of political morality where contending with an individual person's rights, and the complex balance of values of community goals is what various legal scholars[55] assess as the application of the variable margin as a tool to balance the strength of its review.

The balancing between challenging rights and freedoms:
Contextual analyses

In regard of the balancing between competing rights and freedoms, it can be perceived as the functioning methodology of the margin of appreciation.[56] As Mowbray stated that:

> Balancing the rights at stake, as well as the gains and losses of the different persons affected by the process of transforming the state's economy and legal system, is an exceptionally difficult exercise. In such circumstances, in the nature of things, a wide "margin of appreciation" should be accorded to the respondent State.[57]

[51] Sporrong and Lönnroth v. Sweden (ECtHR 1982).
[52] Shany, "Toward a General Margin of Appreciation".
[53] Greer, "Balancing" and the European Court of Human Rights".
[54] Letsas, "Two Concepts of the Margin of Appreciation".
[55] Mowbray, "A Study of the Principle of Fair Balance in the Jurisprudence of the European Court".
[56] Legg, *The "Margin of Appreciation" in International Human Rights Law.*
[57] Mowbray, "A Study of the Principle of Fair Balance".

Among the larger Constitutional questions of the ECHR, investigation into substantive moral justifications is important while determining the relative weight of two contradicting rights. In the previous section, the issue is nearly connected with the significantly more general issue of incapacity of human rights laws to portray their normative substance. In relation to assessing a contention between two countervailing rights, Letsas' "substantive concept of margin of appreciation" becomes significant. The need to constrain Holocaust denials, and other hate speeches or "limitations on access of biological parents to their children placed in foster parents' custody" can be seen as some widely cases of conflict of rights.[58] The "social-democratic philosophy of national societies that place importance on the welfare of children may breach the right of natural parents to visit their children."[59]

Conclusion

The doctrine of margin of appreciation has now developed into an integral part of the "European Court of Human Right's" law; it has used it in thousands of cases. In particular scenarios the ECtHR has taken national authorities to be in a stronger position to pass judgment. According to ECtHR, the more uncertainty there is regarding what constitutes to a breach of human rights, the more reliable national authorities are in making the decision. The court "tends to dis-empower altogether certain forces or groups in today's European society, when it upholds the prohibition of the veil and the pre-emptive dissolution of political party"[60], "thus precluding a compromise that is integrating or inclusive."[61] As a result, the court has to be more open minded in its review of the case. It is believed that in the absence of a certain requirement of what compares to public morals in Europe, member states are "better placed" to assess local values and their application to particular cases. Ultimately, it can be argued that the main priority is to empower individuals in society with fundamental human rights. On the other hand, national security, safety of the society and protection of the people are core issues and responsibilities of the State. It can be viewed as a product of the Strasbourg judge's procedure of consideration, which is meant to enhance the assurance of rights among an overabundance of competing values. In that capacity, "the doctrine's scope is made against the background of the need to equilibrium between the pertinent explanations

[58] Olsson v. Sweden (ECtHR 1988), Johansen v. Norway (ECtHR 1996), K and T v. Finland (ECtHR 2000)

[59] Benvenisti, "The Margin of Appreciation, 'Subsidiarity' and Global Challenges to Democracy".

[60] I. Cram, "Constitutional Responses to Extremist Political Associations–ETA, Batasuna and Democratic Norms", *Legal Studies* 28 (2008): 68.

[61] Ibid.

behind such actions. Hence, it is conceived that such balancing forms created by the Court shows its realistic approach."[62]

Furthermore, the findings of this research further leads us to conclude that by "the application of this doctrine to situations staking out the competencies between governments" and the ECHR involving Article 15, the wide "margin of appreciation" has apparently been recognized during emergency situations. The doctrine has been applied to this article provision which lies at the origin of this doctrine in a relative few occasions. As mentioned by the ECtHR in the *Ireland v. United Kingdom* judgement, the general "better position justification" of the national authorities is supplemented there "by reason of their direct and continuous contact with the pressing needs of the moment."[63] As mentioned in the *Dudgeon v UK*[64], the significance, gravity and sincerity of the interference have narrowed the scope of this doctrine allowed, and in *Buckley v, UK*[65] hence, the "nature of the convention right at issue, together with its importance for the individual and the nature of the activities concerned; the extent to which this has been seen to be closely related to three interrelated factors epitomized."[66]

It can be argued that the doctrine is related to the subsidiary of the international supervision which explains the primary responsibilities of states. One of the responsibilities of the state is to respect the Convention rights. Advocates of this idea believe that the national authorities would be better placed to evaluate what is proportionate in the specific circumstances.[67] However, it is important to note that the margin granted is not as boundless. This is demonstrated in the case where there is to be a European consensus in the matter.[68] The risk created by the fear of a terrorist threat ensures that no state is yet ready to compromise on the national security issues. A judiciary will have to strike a balance between a State's security requirements and individual rights which are also inalienable.

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[62] G. Pavlakos, "Constitutional Rights, Balancing and the Structure of Autonomy", *Canadian Journal of Law & Jurisprudence* 24 (2011): 129.

[63] Ireland v. United Kingdom (ECtHR 1978).

[64] Dudgeon v. United Kingdom (ECtHR 1981).

[65] Buckley v. UK (ECtHR 1996).

[66] J. Callewaert, "Is There A "Margin of Appreciation" in The Application of Articles 2, 3 and 4 of the Convention?", *Human Rights Law Journal* 19 (1998): 6.

[67] Schokkenbroek, "The Basis, Nature and Application of the Margin-of-Appreciation".

[68] Arai-Takahashi, *The Margin of Appreciation Doctrine and the Principle of Proportionality.*