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Reimagining Public Law for a Fractured World: Technology, Identity & Truth

Margin of appreciation and identities in Strasbourg

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Abstract

The human and fundamental rights system of protection established under the European Convention on Human Rights (ECHR), as interpreted and applied by the European Court of Human Rights (ECtHR), and its interplay with the national protection systems, points to a pluralist approach to constitutionalism, protection of rights and division of powers.

The use of the margin of appreciation by the ECtHR, with its merits and inconsistencies, plays a significant role in the management of cultural identity/ diversity issues, allowing for cooperation and dialogue between levels of protection. While assessing the rights and interests at stake and making use of the margin of appreciation doctrine, the ECtHR takes into consideration the arguments presented by the State concerning the protection of national values, “constitutional identity” (itself a contested concept) or the self-understandings of the community about the conditions of “living together”.

Based on previous work on cultural diversity, constitutionalism(s) and human rights, this presentation aims to look at the interplay of legal systems that occurs in this multilevel setting of protection, namely through the use of the margin of appreciation doctrine, and to assess whether and to what extent the margin of appreciation doctrine and the concept of constitutional identity can function as tools for diversity governance and protection of human rights.

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