

Preface

Established by the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Commission and Court of Human Rights have the task of ensuring the observance of the engagements undertaken by the High Contracting Parties. On the one hand, theirs is a subsidiary task – it falls, in the first place, to the national authorities to secure an effective protection of fundamental rights to everyone under the States’ jurisdiction. On the other hand, in order to implement European standards, the Strasbourg organs cannot in any way be bound by decisions of domestic authorities, be they administrative, executive, judicial or legislative. Even national constitutions are not immune from Strasbourg supervision.

Thus, in many respects, the task of Commission and Court may be defined as that of finding the tenuous passage between the undue interference with the sovereignty and autonomy of national authorities, in particular supreme and constitutional courts, on the one hand, and the effective protection of the rights guaranteed under the Convention, on the other. One of the main instruments employed in this delicate exercise of navigation is the doctrine of “margin of appreciation,” which is of particular practical relevance in the application of paragraphs 2 of Articles 8–11, where the test is whether an interference with fundamental rights corresponds to a pressing social need.

The margin of appreciation doctrine has never been studied with a scrutiny comparable to that found in this brilliantly written work of Howard Charles Yourow. All those who are involved in the practical application of the European Convention must be grateful for this treatise, which casts light upon an area of the Strasbourg case-law which, despite its great practical importance, has until now been veiled in foggy darkness.

It would not be realistic to expect such a study to produce ready-made and easy-to-apply recipes. In the last analysis, the personalities of the members of the Convention institutions will have a decisive weight in making the scales tip in favor of the applicant or of the government. Yet, Dr. Yourow has succeeded in highlighting an impressive number of aspects which provide a new and fascinating insight into the inner structure and day-to-day application of the margin of appreciation. His may be a particularly detached approach, as he looks at Europe from the American continent. It is definitely a source of satisfaction to the European practitioner to see that our struggle has inspired research on the other side of the Atlantic. At the same time, this book will have an echo wherever in the world the international protection of human rights is in focus.

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