



The Attitude of International Judicial Institutions Regarding the Doctrine of Margin of Appreciation

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Abstract

Because of expansion in making members of Intentional treaties and their application, States enjoy certain flexibility and freedom of action. This freedom of action makes states able to apply a margin of appreciation concerning the way of following obligations or interpretation of provisions envisaged in the treaties. Although international treaties provide a set of obligations for states, the existence of certain ambiguities in its concepts and expressions, due to some considerations and concerns, be able to provide an equitable opportunity for interpreting their This matter sometimes leads to the exercise of appreciation by states, regarding content and form of their commitments. Although the right to enjoy applying appreciation has been recognized in international law, this does not mean that this right is absolute and abstract. Actually to ensure avoidance of any kind of arbitrary measure or making infective of those provisions, each state or any other beneficiary has to respect certain limits. That is why, with the emphasis on this matter, international judicial bodies express criteria and standards that states have to follow for the enjoyment of their appreciation rights. Otherwise, their conduct might be considered outside of their authority and a violation of the commitments.

Assessment of international judicial bodies shows that in determining the criteria and standards, they don't follow any Same and fixed conduct. That is why these criteria and standards are diverse. These bodies suggest various criteria based on the subject matter of the cases and circumstances around them and any conduct of the respondent party which has been cited on the enjoyment of the right to margin of appreciation, has been analyzed based on those criteria. In addition to the aforementioned factors, chamber multiplicity, and periodic judge change are factors that caused non-compliance of fixed approach. Each international judicial bodies have a specific approach to the margin of appreciation doctrine. Using a descriptive-analytical approach, this research has considered the attitude of certain international and regional dispute settlement bodies, including the International Court of Justice, WTO dispute settlement body, International Criminal Court, European Court of Human Rights, and European Court of



Justice about various dimensions of this matter.

The Council of Europe considers the margin of appreciation doctrine to be a European institution that the Strasbourg institutions have granted to states. In practice, no international judicial body has encountered as much reliance on this doctrine as the European Court of Human Rights, and consequently, has a rich history in judicial practice in explaining the criteria for its acceptance. In the opinion of this Court, the main factor for determining the extent to which the State should be afforded a margin of appreciation is the existence or non-existence of a European consensus. The scope of the margin of appreciation will vary according to the circumstances, the subject matter, and its background. This Court believes in the existence of a broad margin of discretion in some cases and in other cases a narrow margin of discretion. The European court believes that the margin of appreciation to be accorded to the states will vary in the light of the nature of the issues and the seriousness of the interests at stake and the scope of that depends on several factors including the nature of the Convention right in issue, its importance for the individual, the nature of the interference and the object pursued by the interference. The margin will tend to be narrower where the right at stake is crucial to the individual's effective enjoyment of intimate or key rights. Where a particularly important facet of an individual's existence or identity is at stake; the margin will be restricted. Where there is no consensus, either as to the relative importance of the interest at stake or as to how best to protect it, the margin will be wider. For example, the Court believes in a broad margin of appreciation regarding freedom of peaceful assembly.

The International Court of Justice is one of the most controversial judicial bodies concerning the margin of appreciation doctrine. This doctrine rarely comes up before this court. But its approach is deserving of consideration. The margin of appreciation has only been explicitly raised in two cases: the Whaling and the delimitation of maritime zones between Costa Rica and Nicaragua. What is noteworthy is that the Court has not adopted a clear and transparent view in these two cases. Opposite of the European Court of Human Rights, the Court of Justice seems to not tend to accept widely the doctrine. The WTO Dispute Settlement Body is another body in which the margin of appreciation has been considered. The margin of appreciation in the proceedings of the body is not limited only to apply by states, but also it concerns the authority scope of the panels and in various cases, the panel's actions have been criticized before the appeals body as exceeding its margin of appreciation and violating its duties. In the International Criminal Court, during of assessment the necessity of the Appeals Chamber's intervention, the examination of compliance with the limits of appreciation afforded to the trial chambers is also taken into account and for this purpose, criteria have been considered in which the reasonableness of the result and the absence of abuse of the right to exercise appreciation are examined based on the criteria it considers. The European Court of Justice, while accepting that states have a margin of appreciation in determining the type of action that is most appropriate in each situation, does not impose any conditions for establishing the existence of the right to exercise appreciation. As noted, the outcome of the attitude of international judicial institutions regarding the doctrine of the margin of appreciation shows that, despite the similar



approach of these courts in general, the method of applying the margin of appreciation in these institutions is not the same and uniform.

Keywords: Margin of Appreciation, International Dispute Settlement Bodies, Assessment Criteria, Institutional Plurification, Case Law.

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