

## **In Deference to the Patriarchal State - Gendering the Margin of Appreciation in the European Court of Human Rights**

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Through the 2012 Brighton declaration, signatory states of the European Convention on Human Rights (ECHR) called for reforms of the Convention system, including a call to enhance the role of the margin of appreciation doctrine in the European Court of Human Rights (ECtHR or the Court). The margin of appreciation doctrine has been widely debated with critique centering on the elusiveness of the doctrine and on its undermining the universality of human rights.

Despite their other merits however, previous works have not adequately addressed gendered implications of the Strasbourg court's use of the margin doctrine. My paper will address the Court's application of the margin of appreciation in gendered human rights questions with particular attention paid to elements of gender bias in the Court's reasoning and the mechanics of the margin doctrine.

In my paper, I will be looking at a selection of ECtHR judgements in order to identify ways in which the current mode of deference to national legal orders has gendered implications. I will examine cases that have particular relevance for Nordic states, in light of current legal and political debates; these cases include issues on domestic and intimate partner violence, the Court's jurisprudence on Muslim veils, and cases involving family and gender roles. Applying a feminist approach to the analysis of doctrinal material, I will discuss the rarely acknowledged problematic in relying on state's preconceptions of morals and values to determine the scope of Convention rights. The morals, values and cultural conceptions that states refer to in the Court's proceedings are based on majority opinions and are therefore not necessarily propitious for gender equality or gendered issues in general.

I argue that the Court's reluctance to narrow the margin of appreciation in cases where it does not recognize a shift in European consensus can have an entrenching effect, as more robust recognition of the rights of women and other gendered groups relies on the progressive intentions of states. The notion that states are in a better position to evaluate nationally specific morals and values becomes problematic when these cultural arguments are being used to justify limitations on rights of gendered groups and individuals. I will also address cases where the Court appears to side-step contentious human rights questions with the application of a wide margin of appreciation. I argue that this tendency affects gendered human rights questions in particular.

In conclusion, paper, by closely examining ECtHR jurisprudence and employing feminist methodology, sheds much needed light on the previously under-examined gendered implications of this central doctrine.

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