

**THE ORIGIN OF THE MARGIN OF APPRECIATION AND THE
JURISPRUDENCE OF THE EUROPEAN SYSTEM OF HUMAN RIGHTS
AND INTER-AMERICAN SYSTEM OF HUMAN RIGHTS**

**A ORIGEM DA MARGEM DE APRECIÇÃO E A JURISPRUDÊNCIA DO
SISTEMA EUROPEU DE DIREITOS HUMANOS E DO SISTEMA
INTERAMERICANO DE DIREITOS HUMANOS**

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Abstract: This study seeks to study the margin of appreciation doctrine and its implementation by the European System of Human Rights and Inter-American System of Human Rights. This doctrine originated in the European System and was developed by the European Court jurisprudence. It will be shown that in the Inter-American System both the Inter-American Commission and the States use the doctrine of the margin of appreciation based on the jurisprudence of the European Court of Human Rights. However, although it has been mentioned by the Inter-American Court, the margin of appreciation has not been accepted by it.

Keywords: judicial review, rule of law, margin of appreciation, European court of human rights, inter-american court of human rights.

Resumo: Este estudo busca estudar a doutrina da margem de apreciação e sua implementação pelo Sistema Europeu de Direitos Humanos e pelo Sistema Interamericano de Direitos Humanos. Esta doutrina teve origem no Sistema Europeu e foi desenvolvida pela jurisprudência da Corte Europeia. Será demonstrado que no Sistema Interamericano tanto a Comissão Interamericana quanto os Estados utilizam-se da doutrina da margem de apreciação baseada na jurisprudência da

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Corte Europeia de Direitos Humanos. No entanto, apesar de ter sido mencionada pela Corte Interamericana, a margem de apreciação não foi aceita por ela.

Palavras-chave: revisão judicial, estado de direito, margem de apreciação, corte europeia de direitos humanos, corte interamericana de direitos humanos.

Summary: 1. Introduction. 2. The European System of Human Rights and the margin of appreciation. 3. The Inter-American System of Human Rights and the margin of appreciation. 4. Conclusions. 5. References.

1 INTRODUCTION

The concept of the margin of appreciation in international human rights law is without a doctrine consensus and therefore there are numerous interpretations about its meaning. This is because the margin of appreciation doctrine (doctrine) was developed in case law by the European System of Human Rights and not by Convention. Therefore, this essay will present the most important cases to clarify its meaning, considering the European Court of Human Rights (ECtHR) have long been criticized about “the lack of a uniform or coherent application of the margin of appreciation doctrine”². In addition, this article aims to present the application of the margin of appreciation in the jurisprudence of the Inter-American System of Human Rights, despite some authors³ considering it absent, this author demonstrates its presence.

The margin of appreciation expression is derived from French term *marge d’appréciation* which translated in English is the “margin of assessment/appraisal/estimation”⁴. While a consensus of the definition of the term remains elusive, broadly speaking, the margin of appreciation in this paper is operationalized in line with international institutions (such as Strasbourg and Inter-American System of Human Rights) as “prepared to accord national authorities in fulfilling their obligations under”⁵ their Conventions that they submitted themselves.

² LETSAS, G. (2006). **Two concepts of the margin of appreciation**. Oxford Journal of Legal Studies, 26(4), 705.

³ Such as Claudio Nash Rojas in: ROJAS, Claudio Nash. La doctrina del margen de apreciación y su nula recepción en la jurisprudencia de la Corte Interamericana de Derechos Humanos. Anuario Colombiano de Derecho Internacional, 2018, vol. 11, p. 71-100.

⁴ GREER, Steven C. **The margin of appreciation**: interpretation and discretion under the European Convention on Human Rights. Council of Europe, 2000, p.5.

⁵ See Greer, as above.



2 THE EUROPEAN SYSTEM OF HUMAN RIGHTS AND THE MARGIN OF APPRECIATION

It's important to explain that the European Court of Human Rights is a regional human rights judicial body based in Strasbourg and established by the European Convention on Human Rights. The European Court was created in 1950 and began operating in 1959. In the beginning, the European human rights system was composed of the European Commission of Human Rights and the European Court, which implied that individuals and states must submit their applications to the European Commission of Human Rights to consider if a petition was admissible to the Court or not. However, in 1998 this scenario changed, and all applications can have directly access to the Court. In other words, the European Court become the only body having jurisdiction over petitions submitted directly by individuals and States concerning violations of the European Convention.

The margin of appreciation was introduced for the first time by European Commission of Human Rights in *Greece v. United Kingdom (UK)*⁶ 1958 over the island Cyprus. Under Article 15, the European Commission considered States has their “own assessment of the existence of a ‘public emergency threatening the life of the nation’”⁷.

On the other side, the margin of appreciation doctrine of the European Court of Human Rights is developed on its jurisprudence and based on the European Convention. In saying this, I propose to analyze the origin of the margin of appreciation doctrine in the jurisprudence of the European Court of Human Rights. As you will see, in the earliest cases that the European Court introduced the margin of appreciation was set by interpretation of Article 15⁸, which lays down the derogation from State obligations under the Convention in times of emergency.

⁶ EUROPEAN COMMISSION OF HUMAN RIGHTS. *Greece v the United Kingdom*, App no 176/56, Report of the European Commission of Human Rights of 26 September 1958

⁷ SPIELMANN, Dean. **Whither the Margin of Appreciation?** Current Legal Problems, 2014, vol. 67, p.51

⁸ Article 15 of the European Convention: Derogation in time of emergency 1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law. 2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision. 3. Any High Contracting Party availing itself of this right of derogation shall keep the Secretary General of the Council of Europe fully informed of the measures which it has taken and the reasons therefor. It shall also inform the Secretary General of the Council of Europe when such measures have ceased to operate and the provisions of the Convention are again being fully executed.



The first case to introduce the margin of appreciation by the European Court was *Belgian Linguistics Case v. Belgium* in 1968, in which the Court identified the derogation in times of emergency by Article 15 of the European Convention on Human Rights and considered the subsidiary nature of the Court itself in these cases. “In so doing it cannot assume the role of the competent national authorities, for it would thereby lose sight of the subsidiary nature of the international machinery of collective enforcement established for the Convention”⁹.

Ten years later, in *Ireland vs the United Kingdom* the ECtHR emphasized that there are limits to the Court’s power of review where Article 15 is concerned, besides, the Court declared that each State “its responsibility for the `life of [its] nation` to determine whether that life is threatened by a `public emergency` and, if so, how far it is necessary to go in attempting to overcome the emergency”¹⁰. The Court leaves to those authorities a wide of appreciation under Article 15, but highlights the States has no unlimited power and the “domestic margin of appreciation is thus accompanied by a European supervision”¹¹.

The application of the margin of appreciation is not restricted to the interpretation of Article 15 of the European Convention. In 1971, in *Vagrancy*¹² judgment, the European Court used the margin of appreciation through the interpretation of Article 8(2)¹³, which lays down the right to respect for private and family life and no interference by a public authority with the exercise of this rights except, when necessary, in a democratic society. The European Court said the “Belgian authorities did not transgress [...] the limits of the power of appreciation which Article 8 (2) (art. 8-2) of the Convention (...)”¹⁴, and stressed that

⁹ EUROPEAN COURT OF HUMAN RIGHTS. **Case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” v. Belgium (Merits)**, 23 July 1968, Application no. 1474/62, 1677/62, 1691/62, 1769/63, 1994/63, 2126/64, B10.

¹⁰ EUROPEAN COURT OF HUMAN RIGHTS. **Ireland vs the United Kingdom**, 18 January 1978, Application No. 5310/71, para. 207

¹¹ See *Ireland vs. the United Kingdom*, as above.

¹² EUROPEAN COURT OF HUMAN RIGHTS. **Cases de Wilde, Ooms and Versyp (“Vagrancy”) v. Belgium(Merits)**, 18 June 1971, Application no. 2832/66; 2835/66; 2899/66

¹³ Article 8 of the European Convention: Right to respect for private and family life 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

¹⁴ EUROPEAN COURT OF HUMAN RIGHTS. **Cases de Wilde, Ooms and Versyp (“Vagrancy”) v. Belgium(Merits)**, 18 June 1971, Application no. 2832/66; 2835/66; 2899/66, para. 93.



even in cases of persons detained for vagrancy, those authorities had sufficient reason to believe that it was “necessary” to impose restrictions for the purpose of the prevention of disorder crime, the protection of health or morals, and the protection of the rights and freedoms of others.¹⁵

The margin of appreciation doctrine is a judicial creation, and it was applied by ECtHR for the first time in the *Handyside* judgment¹⁶ and “is considered foundational in the development of the Court’s approach to [this] doctrine”¹⁷. The facts are related to the publication of a book in Denmark that was considered obscene by the UK authorities who seized and confiscated it, as well as imposed the payment of a fine on its publisher. The European Court developed the margin of appreciation doctrine through the interpretation of Article 10 (2) (freedom of expression) considered there is no uniform European conception of morals and for that reason, “State authorities are in principle in a better position than international judge to give an opinion on the exact content of these [morals] requirements as well as on the necessity of a restriction or penalty intended to meet them”¹⁸. George Letsas suggests “[t]he idea that national authorities are ‘better placed’ to decide on questions of moral”¹⁹ is a result of non-uniform concept by the court itself as well as “there is no *consensus* among Contracting States”²⁰.

Conversely, in the *Sunday Times*²¹ judgment on violation by the UK of the same article of the Convention (Article 10 (2)) in relation to the measures taken against the publication of an article of the “Sunday Times” on the “case of thalidomide”. The European Court judge, contrary to the *Handyside* case, interpreted that the State violated the referred article, for two main

¹⁵ *Id.*

¹⁶ Article 10 Freedom of expression. 1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

¹⁷ Andrew Legg. The margin of appreciation in international human rights law: deference and proportionality. Part II Practice: Factors affecting the margin of appreciation. Democracy and Participation. OUP Oxford, 2012, p12.

¹⁸ EUROPEAN COURT OF HUMAN RIGHTS. **Case of Handyside v. The United Kingdom**, 7 December 1976, Application No. 5.493/72, para. 48.

¹⁹ LETSAS, George. **Two concepts of the margin of appreciation**. Oxford Journal of Legal Studies, 2006, vol. 26, no 4, p. 725.

²⁰ See Letsas, p. 709.

²¹ EUROPEAN COURT OF HUMAN RIGHTS. **Case of the Sunday Times v. The United Kingdom**, 26 April 1979, Application No. 6538/74.



reasons: the prohibition imposed by English judges to publish the article on “Sunday Times” “does not fall within one of the expectations provided for in paragraph 2”²² and as a result “that it would constitute contempt of court”^{23,24}.

Subsequently, the European Court used margin of appreciation in many cases, where we can identify two different position in relation to the application of the margin of appreciation. Claudio Nash Rojas suggests if there is European consensus on questions of moral this limits the margin of appreciation, however, if there is no consensus the margin of appreciation of the State is increased.²⁵

3 THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS AND THE MARGIN OF APPRECIATION

On the other hand, the Inter-American System of Human Rights has not made use of the margin of appreciation as much as the European Court and some authors consider it absent in those jurisprudence. A proper understanding of the use of the margin of appreciation by the I/A Court H.R. requires a brief presentation of the Inter-American System of Human Rights.

The Inter-American System of Human rights “was born within the framework of the universalization of human rights, fruit of the first international agreement on Human Rights at the IX International Conference of American States in 1948”²⁶. It is a regional mechanism for the promotion and protection of human rights, through the two organs created by the Organization of American States (OAS): Inter-American Commission on Human Rights and Inter-American Court of Human Rights.²⁷ These organs are responsible for overseeing the compliance of the

²² See Case of the Sunday Times v. The United Kingdom, as above, para. 45.

²³ “Contempt of court is, with certain exceptions, a criminal offence punishable by imprisonment or a fine of unlimited duration or amount or by an order to give security for good behavior, punishment may be imposed by summary process without trial by jury and the publication of facts or opinions constituting a criminal contempt may also be restrained by similar process” European Court in Case of the Sunday Times v. The United Kingdom, 26 April 1979, Application No. 6538/74, para. 18.

²⁴ EUROPEAN COURT OF HUMAN RIGHTS. **Case of the Sunday Times v. The United Kingdom**, 26 April 1979, Application No. 6538/74, para. 11.

²⁵ ROJAS, Claudio Nash. **La doctrina del margen de apreciación y su nula recepción en la jurisprudencia de la Corte Interamericana de Derechos Humanos**. Anuario Colombiano de Derecho Internacional, 2018, vol. 11.

²⁶ GUERRA, Raquel. **Argentina y Brasil frente al Sistema Interamericano de Derechos Humanos: el rol de las organizaciones no gubernamentales en el cambio político doméstico**. 2018. Master Thesis (*Master's in international studies*) - Department of Political Science and International Studies Torcuato di Tella University, Buenos Aires.

²⁷ See GUERRA, Raquel as above.



American Convention on Human Rights – an international human rights instrument adopted by the majority of OAS’s member states on 1969.

The Inter-American Commission on Human Rights is the only organ responsible to receive human rights violations petitions. So, under its mandate, the IACHR “receives, analyzes, and investigates individual petitions that allege violations of human rights, with the respect to both the Member States of OAS that have ratified the American Convention, and those Member States that have not ratified it”²⁸. If they consider a member state of the OAS to have violated the American Convention rights, they will submit the case to the Inter-American Court, who has jurisdiction in “all cases concerning the interpretation and application of the Convention that are submitted to it”²⁹.

As was discussed earlier, the margin of appreciation doctrine was developed in case law by the European Court of Human Rights (ECtHR) and not by Convention. The same applies to the Inter-American System, the margin of appreciation doctrine is not *expressly* assured by the American Convention, but its implied. However, some authors such as Antonio Cançado consider that “[a]fortunately such doctrine [margin of appreciation] has not found an explicit parallel development under the Convention on Human Rights”³⁰. This paper will now explore whether or not the Inter-American System applies the margin of appreciation.

In the framework of the Inter-American Commission on Human Rights, Gonzalo Candia³¹ illustrates two paradigmatic cases where the organ implicit used the margin of appreciation: *Ríos-Montt v. Guatemala and Aylwin et al. v. Chile*. In both cases, the IACHR analyzed political rights related to the margin of appreciation of States regarding the American Convention.

In the *Río-Montt* case José Efraín Río Montt filed a complaint against Guatemalan Government for the violation of human rights set forth in the American Convention, in particular Article 23 (political rights) and 24 (the right to equal protection). Due to the effects of the various resolutions and acts of the Government that declared his candidacy to the Presidency of

²⁸Basic Documents in the Inter-American System, Introduction, available in: http://www.oas.org/en/iachr/mandate/Basics/intro.asp#_ftnref11

²⁹ Article 62 of American Convention on Human Rights

³⁰ Cançado, Antonio. **El derecho internacional de los derechos humanos en el siglo XXI**, 2ª ed., Editorial Jurídica de Chile, Santiago, 2006, p. 389, as cited in ROJAS, Claudio Nash. La doctrina del margen de apreciación y su nula recepción en la jurisprudencia de la Corte Interamericana de Derechos Humanos. Anuario Colombiano de Derecho Internacional, 2018, vol. 11, p. 71-100.

³¹ CANDIA, Gonzalo. **Comparing Diverse Approaches to the Margin of Appreciation**: The Case of the European and the Inter-American Court of Human Rights. Available at SSRN 2406705, 2014.



Guatemala inadmissible.³² In the report, regarding the allegation of the petitioner of violation of the Article 23³³ of the American Convention (right to participate in government) the Inter-American Commission used the margin of appreciation. The IACHR considered that

the context of Guatemalan and international constitutional law in which this condition of ineligibility is placed is the appropriate dimension for analysis of the applicability of the Convention in general, and of the applicability of its Arts. 23 and 32 to the instant case, and from which the margin of appreciation allowed by international law can emerge.³⁴

In affirming that, the IACHR through analysis of the national law considered that the Guatemalan constitution established the ineligibility of those lead movements of governments and “affirmed that the state had a margin of appreciation in this area”³⁵.

On the other hand, in *Aylwin et al* case on political rights as well, the Inter-American Commission decided adverse to *Río-Montt* case, by understanding there was an “odious and illegitimate discrimination in the Chilean constitution and that works a real diminution of the equal right of citizens to elect their representatives”³⁶. They “arrived at this conclusion after developing a proportionality review in which there was a rhetorical mention to the margin of appreciation”³⁷.

To illustrate the use of the margin of appreciation through history of Inter-American System, Gonzalo Candia named two cases: *Baby-boy v. United States* (1981) and *Artavia-Murillo et al. vs. Costa Rica* (2012).

In *Baby-boy case* Christian S. White and Gary K. Potter filed a petition against the United States of America and the Commonwealth of Massachusetts for violation of human rights set forth the American Declaration of Rights and Duties of Man, “as clarified by definition and

³² INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. José Ríos-Montt v. Guatemala, Case 10.804, Inter-American Commission on Human Rights, Report No. 30/93, OEA/Ser.L/V.85, doc. 9 rev. (1993).

³³ Article 23 of the American Convention: Right to Participate in Government, 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.

³⁴ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **José Ríos-Montt v. Guatemala**, Case 10.804, Inter-American Commission on Human Rights, Report No. 30/93, OEA/Ser.L/V.85, doc. 9 rev. (1993), para.24.

³⁵ CANDIA, Gonzalo. **Comparing Diverse Approaches to the Margin of Appreciation**: The Case of the European and the Inter-American Court of Human Rights. Available at SSRN 2406705, 2014, page 12.

³⁶ Andrés Aylwin et al. v. Chile, Case 11.803, Inter-American Commission on Human Rights, Report No. 95/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1999), para.108.

³⁷ CANDIA, Gonzalo. **Comparing Diverse Approaches to the Margin of Appreciation**: The Case of the European and the Inter-American Court of Human Rights. Available at SSRN 2406705, 2014, page 12.



description of the American Convention on Human Rights”³⁸. The petitioner claimed *Baby Boy* “was killed by abortion process (hysterectomy), by Dr. Kenneth Edelin, M. D., in violation of the right to life granted” by those international instruments.

Despite the fact that the United States of America is not party to the American Convention, the State adopted the American Declaration of the Rights and Duties of Man in 1948. It means that Inter-American Commission on Human Rights has jurisdiction over the United States based on the right set forth in the American Declaration.

In saying that, the Inter-American Commission understood the “[Article I] leaves to each state the power to determinate, in its domestic law, whether life begins and warrants protection from the moment of conception or at any other point in time prior to birth”³⁹. Gonzalo Candia pointed out that the Commissioner Aguilar “recognized this margin of state discretion in spite of his believe that `human life beings at the very moment of conception and ought to warrant complete protection for that moment”⁴⁰ and for that reason declared that the facts did not constituted a violation of articles of the American Declaration.⁴¹

Over the years, in *Artavia-Murillo et al.* case, the Inter-American Commission decided adversely in the *Baby-boy* case. The *Artavia-Murillo* case is related to the prohibiting of all mechanisms of in vitro fertilization by the Supreme Court of Costa Rica. Nine couples filed a petition against the Costa Rican State for violation of Article 11 (right to privacy), Article 17 (rights of the family) and Article 24 (rights to equal protection) set forth in the American Convention. In the report, the Inter-American Commission mentioned the margin of appreciation in reference to the European Court of Human Rights decision⁴², who pointed

³⁸ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Christian B. White & Gary K. Potter v. United States of America**, Case 2.141, Inter-American Commission on Human Rights, Report No.23/81, OEA/Ser.L/V/II.85, doc. 9 rev. 1 (1981).

³⁹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Christian B. White & Gary K. Potter v. United States of America**, Case 2.141, Inter-American Commission on Human Rights, Report No.23/81, OEA/Ser.L/V/II.85, doc. 9 rev. 1 (1981), as cited in CANDIA, Gonzalo. Comparing Diverse Approaches to the Margin of Appreciation: The Case of the European and the Inter-American Court of Human Rights. Available at SSRN 2406705, 2014, page 14.

⁴⁰ CANDIA, Gonzalo. **Comparing Diverse Approaches to the Margin of Appreciation: The Case of the European and the Inter-American Court of Human Rights**. Available at SSRN 2406705, 2014, page 14.

⁴¹ INTER-AMERICAN COMMISSION ON HUMAN RIGHTS. **Christian B. White & Gary K. Potter v. United States of America**, Case 2.141, Inter-American Commission on Human Rights, Report No.23/81, OEA/Ser.L/V/II.85, doc. 9 rev. 1 (1981).

⁴² EUROPEAN COURT OF HUMAN RIGHTS. **Case of Dickson v. the United Kingdom** (Application no. 44362/04) European Court of Human Rights, 4 December 2007.



where a particularly important facet of an individual’s existence or identity is at stake (such as the choice to become a genetic parent), the margin of appreciation accorded to a State will in general be restricted.

And as result, it declared the petition admissible and submitted the case to the Inter-American Court.

In the judgment of the *Artavia-Murillo et al.* case⁴³, the State of Costa Rica used the margin of appreciation doctrine to argue that “the doctrine of moral consensus as a factor of margin of appreciation [...] has established that, in order to restrict it, the consensus must be clear and evident”⁴⁴. And claimed there wasn’t a consensus regarding the subject - legal status of embryo and the beginning of human life, and for this reason the margin of appreciation should be granted to regulate in vitro fertilization. Besides, the State also mentioned the jurisprudence of the European Court of Human Rights on the doctrine of the margin of appreciation and mentioned that the law of the Inter-American Court also had precedents that contemplate the possibility of it.⁴⁵

The Inter-American Court analysis appointed to the European Court of Human Rights jurisprudence regarding to the right to life. And concluded the European Court

made it clear that “this margin of appreciation is not unlimited” and that “the Court must supervise whether the interference constitutes a proportionate balancing of the competing interests involved [...]. A prohibition of abortion to protect unborn life is not therefore automatically justified under the Convention on the basis of unqualified deference to the protection of pre-natal life or on the basis that the expectant mother’s right to respect for her private life is of a lesser stature.”⁴⁶

As a result, the Inter-American Court considered the decision of the Supreme Court of Costa Rica to be “arbitrary and excessive [...] in private and family life”⁴⁷, highlighting the “embryo, prior to implantation, is not covered by the terms of Article 4 of the Convention”⁴⁸. Besides, the IACHR did not consider pertinent the State’s argument of the margin of appreciation

⁴³ INTER-AMERICAN COURT OF HUMAN RIGHTS. **Case of Artavia Murillo et al.** (In Vitro Fertilization) v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2012. Series C No. 25

⁴⁴ *Id.* at para. 170.

⁴⁵ *Id.*

⁴⁶ *Id.*, para. 239.

⁴⁷ See CANDIA, Gonzalo, as above.

⁴⁸ See INTER-AMERICAN COURT OF HUMAN RIGHTS. **Case of Artavia Murillo et al.**, as above, para. 315.



and declared that the State of Costa Rica violated the American Convention to the detriment of the petitioners.⁴⁹

4 CONCLUSIONS

In this paper, I explained the origin and meaning of the margin of appreciation and how it has been used by the European System of Human Rights and the Inter-American System of Human Rights. In so doing, I concluded that the margin of appreciation originated through the European Commission on Human Rights jurisprudence and has been developed by the European Court that created its doctrine. I also presented the Inter-American System of Human Rights and its organs: Inter-American Commission on Human Rights and Inter-American Court of Human Rights. The study of some cases showed us that the use of margin of appreciation by Inter-American System is based on the European Court jurisprudence.

The analysis of some cases of the European System pointed to the firsts cases to introduce the margin of appreciation by the European Commission and indicated that the margin of appreciation doctrine has been developed and used by the European Court of Human Rights. The jurisprudence analysis showed us that the European Court has a different position on the application of the margin of appreciation, perhaps indicating that the lack of convention provision about this doctrine leads to different decisions in its application.

On the other hand, the Inter-American System's jurisprudence illustrated us that the margin of appreciation has been used by States and the Inter-American Commission on Human Rights. This analysis showed us that the use of the margin of appreciation doctrine by States and the Inter-American Commission is based on the European Court jurisprudence. Besides, I demonstrated that the Inter-American Court mention the margin of appreciation based on the European Court jurisprudence as well, but has not been accepted by it.

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⁴⁹ *Id.*, para. 316.



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