Chapter 3  The principle of subsidiarity

3.1  Introduction

Anyone slightly familiar with the Court’s case-law knows that the margin of appreciation-doctrine gives rise to a number of complex questions relating to the intensity of the Court’s scrutiny.¹ Since the early 1980’s, legal doctrine has been preoccupied with the analysis of the opposing forces inherent in the margin of appreciation-doctrine, in particular the “national sovereignty/international human rights”-dichotomy.²


The most important books on the subject have generally focused on the margin of appreciation rather than the principle of proportionality, but that may be changing. The lack of clarity attaching to the doctrine is one of the reasons why it has so been widely criticised. Some commentators find the doctrine entirely superfluous, some


