

LOCAL DEMOCRACY AND HUMAN RIGHTS IN THE COUNCIL OF EUROPE: RECONSIDERING THE PRINCIPLE OF SUBSIDIARITY (WITH REFERENCE TO TAXATION)

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Abstract. The principle of subsidiarity is a concept that is currently receiving increased attention within the fields of both European human rights law and governance practice. The present study examines the manner in which subsidiarity is implemented within the Council of Europe, with a particular focus on its application in the context of the protection of fundamental human rights and taxation. The paper aims to explore the evolving role of local and regional authorities in implementing European human rights standards while maintaining fiscal responsibility and legal accountability. The research focuses on how the European Court of Human Rights applies the subsidiarity principle to tax-related cases, balancing national discretion with Convention-based safeguards. The study applies a doctrinal methodology, combining legal theory with case law analysis. It investigates leading Court's judgments (e.g., *Ferrazzini v. Italy*, *Gasus Dosier v. the Netherlands*, *Bulves AD v. Bulgaria*) to identify the legal logic, proportionality tests, and the Court's reasoning in taxation matters. Additionally, the paper examines the links between subsidiarity, fiscal autonomy and sustainable development, focusing on the local implementation of SDGs 11, 13 and 16. As a result, the paper explores how subsidiarity can empower local self-government bodies to administer taxes competently and act as key human rights stakeholders. The findings show that combining human rights law with the SDGs increases local democratic legitimacy and policy coherence. The research provides a framework for aligning fiscal governance with human rights protections, offering practical insights to policymakers, legal scholars and European institutions seeking to reinforce local governance based on the rule of law.

Keywords: subsidiarity, Council of Europe, local government, European Court of Human Rights, taxation, human rights, fiscal autonomy, SDGs, multilevel governance, legal proportionality, democratic accountability.

JEL Classification: K30, K38

1. Introduction

The principle of subsidiarity is a fundamental concept within the legal system of the Council of Europe. It determines how powers and responsibilities are shared between the various levels of government. The principle supports both local democracy and the protection of human rights. It also informs the European Court of Human Rights' (ECtHR, Court) decisions on when to intervene.

This article examines the principle of subsidiarity from the perspectives of human rights and local self-governance. Particular attention is paid to how the European Court of Human Rights (ECtHR) applies the principle when reviewing state policies, including taxation. Subsidiarity helps to balance national decision-making with the duty to respect human rights in the area of taxation. In such instances, the Court prioritises fairness, proportionality and the right to property, as

enshrined in Article 1 of Protocol No. 1 to the European Convention on Human Rights (Convention, ECHR).

The article employs doctrinal analysis and recent case law. It shows how the principle of subsidiarity can help local and national authorities to fulfil their obligations under the European Convention on Human Rights (ECHR). It also shows how the principle can encourage transparency, accountability, and fairness in public policies. Ultimately, the article asserts that subsidiarity is pivotal in connecting local democracy with the broader European human rights framework.

This research examines the principle of subsidiarity in the case law of the European Court of Human Rights (ECtHR), paying particular attention to its application in tax cases. The study takes a mixed-methods approach, combining legal theory and case law analysis. This helps explain how subsidiarity can support national decision-making processes while protecting human rights.

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The article demonstrates that subsidiarity functions as both a legal principle and a practical tool by combining theory and case law. It helps to strike a balance between national policies and European human rights standards, even in sensitive areas such as taxation and local governance.

2. Subsidiarity, Local Governance and Human Rights: a Council of Europe Perspective

The principle of subsidiarity is a core value within the Council of Europe's legal and political structure. It states that decisions should be made by the level of government closest to the people and best placed to act. This means that local and regional authorities should address local issues wherever possible, with national and international bodies only stepping in when necessary. This approach supports both democratic decision-making and effective public administration. Within the Council of Europe, subsidiarity is an important governance principle and a valuable tool for safeguarding human rights.

Subsidiarity is also linked to democratic trust and participation. When people can influence decisions in their own town or region, they are more likely to have faith in the system. As Zürn (2021) argues, subsidiarity reduces the "democratic deficit" by keeping power closer to citizens. It also improves the way in which governments respond to local issues, thereby increasing efficiency and accountability.

At the same time, subsidiarity allows for flexibility. Not all countries have the same administrative structure or legal culture. According to Føllesdal (2014), subsidiarity allows room for national traditions, but still requires respect for shared human rights values. This flexibility is what makes subsidiarity such a robust principle for multilevel governance in Europe.

Subsidiarity also encourages the development of local legal capacity and institutional responsiveness. When governance decisions are made closer to citizens, local actors can adapt policies to meet the specific needs of communities. This fosters innovation in the protection of human rights, social welfare and public services. As Nicolaidis (2013) argues, subsidiarity enables 'responsive governance' by balancing unity and diversity within multi-level systems. Local governments are not only implementers, but also creators of rights-sensitive policies that reinforce democratic legitimacy. This approach is particularly important when dealing with complex challenges such as inequality, decentralisation or post-conflict recovery.

According to the case law of the ECtHR, subsidiarity means that national authorities are primarily responsible for ensuring rights under the ECHR. The ECtHR plays a 'secondary' role, only intervening when local or

national institutions fail to protect these rights. This is evident in several judgements, particularly in relation to property rights and access to justice. The intention is to reinforce national systems, not to replace them. Thus, subsidiarity safeguards the equilibrium between national sovereignty and international human rights standards.

G. Backhaus Urgen (1997, p. 281) underlines, that "[s]ubsidiarity is a perfectly generalizable principle of organization. It can apply to all areas of policy, financial, agricultural, technological, education, defense, economic development and, of course, environmental policy. The principle of subsidiarity is an organizing principle. Taken as such, it is silent about the specific purpose, direction or content of a particular policy". Although the principle of subsidiarity is frequently discussed in the broader context of local and regional governance and human rights, its relevance to taxation merits closer examination. A salient practical domain in which the principle of subsidiarity is assuming an increasingly prominent role pertains to the field of taxation. Although the primary responsibility for tax policy lies with individual nations and is not directly overseen by the Council of Europe, numerous tax-related issues fall within the purview of human rights. For instance, Article 1 of Protocol No. 1 to the European Convention on Human Rights (ECHR) safeguards the right to the peaceful enjoyment of possessions, encompassing protection against arbitrary or excessive taxation. In such cases, the European Court of Human Rights (ECtHR) is tasked with the responsibility of determining whether national tax regulations adhere to the principles of fairness, proportionality, and procedural guarantees. The purpose of this review is to ascertain whether national remedies were available and effective prior to the intervention.

At the same time, the principle of subsidiarity supports the decentralisation of tax powers to local and regional authorities. This helps to ensure that taxation is aligned with local needs. Local authorities are often better placed to understand the social and economic circumstances of their communities. This enables them to set fair tax rates and provide services that meet local expectations. Property taxes, local service fees and small business taxes are areas in which local administrations are often more responsive and efficient than central governments.

Subsidiarity also fosters fiscal autonomy and responsibility. Local authorities that possess the capacity to raise and expend their own revenues become more accountable to citizens. It is incumbent upon them to provide a rationale for their decisions and to substantiate their budgetary allocations. This approach has the potential to foster public trust and enhance the quality of local governance. However, this must be balanced with national oversight to ensure basic rights and services are protected across all regions.

An important challenge is regional inequality. Decentralised taxation may lead to unfair outcomes if richer regions can raise more revenue than poorer ones. The principle of subsidiarity must therefore be incorporated into national redistribution strategies. This could include equalisation grants or transfers from the central government, ensuring that all citizens have access to a minimum level of public services, regardless of where they live.

Subsidiarity can also help to resolve tax-related disputes. Disagreements may arise over whether a tax rule should be applied locally or nationally, or whether it violates human rights. The principle provides a framework for deciding who should act in such cases: local authorities, national courts or international bodies. It can help to clarify roles and prevent institutional conflict.

Finally, the principle of subsidiarity promotes co-operation over control. Even in areas such as taxation, where the Council of Europe has no direct authority, its standards regarding human rights, democracy and good governance can still influence national practices. This can promote better coordination between different levels of government, more transparent tax policies and stronger rights protection.

In summary, subsidiarity plays a significant role in linking local democracy with European human rights law. Although taxation may appear to be beyond the Council of Europe's primary remit, it serves as a useful illustration of how subsidiarity can promote fair, accountable and rights-based governance in practice.

3. The Principle of Subsidiarity in ECtHR Jurisprudence on Taxation

The principle of subsidiarity is a foundational element of the European human rights system. Within the Council of Europe, it is the responsibility of national authorities—legislative, executive and judicial – to be the primary and principal guarantors of human rights protected by the European Convention on Human Rights (ECHR).

This concept is pivotal to the operation of the ECtHR, which functions as a subsidiary mechanism. As articulated in the Interlaken (2010) and Izmir (2011) Declarations, the European Court of Human Rights (ECtHR) is only mandated to intervene in instances where national systems demonstrate an inability to provide effective remedies. This structure maintains a careful balance between international oversight and domestic responsibility.

While the Council of Europe (CoE) does not have the authority to harmonise tax policy across member states, a role that falls under the remit of the European Union, the European Court of Human Rights (ECtHR) frequently adjudicates on tax-related complaints under the auspices of human rights law.

In this particular context, the principle of subsidiarity is of particular relevance. This approach is justified by the Court's need to adopt a deferential stance towards national tax matters, whilst simultaneously reinforcing its mandate to ensure that taxation does not contravene the Convention's fundamental protections. The Court's jurisprudence is particularly focused on the principles set out in Article 1 of Protocol No. 1 (protection of property), along with Article 14 (non-discrimination), Article 6 (fair trial), and, in some instances, Article 8 (privacy).

The European Court of Human Rights (ECtHR) applies the principle of subsidiarity through its margin of appreciation doctrine. This doctrine acknowledges that domestic authorities are better positioned to evaluate national needs, including economic and fiscal priorities. As Nussberger (2020, p. 13) contends, the reinforcement of subsidiarity enables the Court to preserve its legitimacy, whilst respecting diversity among Member States, while maintaining the uniform application of human rights standards. In the context of tax matters, this signifies that national governments are responsible for the design of their own fiscal systems, provided that these systems are consistent with legal boundaries, principles of proportionality, and fundamental rights. This position is also endorsed by Lambert (2018).

This approach was clearly expressed in *Ferrazzini v. Italy* (2001). The case concerned an individual who challenged supplementary tax assessments and lengthy administrative procedures. The applicant contended that Article 6 §1 (right to a fair trial) should be applicable in this case. However, the Court ruled that tax disputes do not fall under this article because taxation remains at the "hard core" of public authority prerogatives. The Court emphasised the public nature of the relationship between taxpayers and the state, thereby confirming that such matters are primarily governed by national law.

Still, the Court has not excluded tax matters from its scrutiny. In *Gasus Dosier- und Fördertechnik GmbH v. the Netherlands* (1995), the Court dealt with the seizure and sale of a machine to recover unpaid taxes. The applicant company alleged a violation of its property rights under Article 1 of Protocol No. 1. The ECtHR acknowledged the public interest in tax enforcement and upheld the seizure, determining that interference was proportionate and served a legitimate aim. However, it was asserted that tax laws must not be arbitrary and must maintain a fair balance between state interests and individual rights.

This proportionality test became more prominent in later cases. In *Bulves AD v. Bulgaria* (2009), the Court found a violation of Article 1 of Protocol No. 1 because a company was penalised due to its supplier's reporting failure. The applicant had fulfilled its own tax obligations, and the Court ruled that the

imposition of responsibility on it for another company's non-compliance was excessive and disproportionate. This ruling signified an explicit restriction on fiscal enforcement powers, thereby reinforcing the principles of legal certainty and fairness in taxation.

Another important example is *Shchokin v. Ukraine* (2013), where the ECtHR addressed unclear tax laws and retroactive penalties. The applicant challenged the inconsistent judicial practice and delayed communication of tax obligations. The Court determined that the retroactive imposition of tax liabilities without a clear legal basis violated Article 1 of Protocol No. 1. The ruling served to reinforce the notion that the principle of subsidiarity does not serve as a justification for legal uncertainty or retroactivity in the context of taxation, particularly when such factors result in the imposition of excessive burdens.

Other important cases, such as *National & Provincial Building Society and Others v. the United Kingdom* (1997), highlight how the ECtHR handles tax measures that affect a broad group of individuals. The Court acknowledged the legitimacy of UK tax policy, issuing a caveat that states should not impose an excessive individual burden, even in pursuit of general fiscal objectives. Similarly, in *J.A. Pye (Oxford) Ltd v. the United Kingdom* (2005), the ECtHR reaffirmed that state interference with property rights must follow a legitimate aim and be necessary in a democratic society.

These rulings demonstrate how the ECtHR employs the principle of subsidiarity not as a means of withdrawing from scrutiny, but rather as a mechanism to guide it. As Saul (2017) observes, the Court presents itself as "subsidiary to national mechanisms", yet it continues to fulfil a pivotal role in ensuring that these mechanisms adhere to the standards set out in the Convention. In cases related to taxation, this approach enables the Court to achieve a balance between respecting national sovereignty and upholding minimum standards of protection.

The broader importance of this jurisprudence is explored in Attard and de Albuquerque's (2023) book *Taxation at the European Court of Human Rights*. The authors conducted a comprehensive analysis of over 500 cases, demonstrating that tax measures can give rise to not only property-related issues but also concerns under Articles 6, 8, and 14 of the Convention. The study examines the limits of judicial activism in tax policy, emergency fiscal measures, and the need for procedural safeguards in tax administration. Their work provides an advanced doctrinal and empirical map of how the Convention applies in fiscal contexts and shows how subsidiarity operates in different kinds of disputes.

The European Court of Human Rights' (ECtHR) interpretation of subsidiarity also protects the increasing role of local and regional authorities in

tax governance. As decentralisation progresses, there is an observable shift in the allocation of tax responsibilities to the local level (see Forst, D.(n.d.)). While this enhancement of responsiveness and participation is to be welcomed, it is submitted that better procedural protections for local taxpayers and clearer coordination between local and national systems are also required. Subsidiarity provides a framework for understanding these dynamics, ensuring that local fiscal decisions respect human rights and that the ECtHR is able to intervene when local remedies fail.

In conclusion, the Court's case law demonstrates how subsidiarity helps balance the fiscal autonomy of states with the duty to respect individual rights. The ECtHR's supervisory role in protecting fairness, legal certainty, and proportionality is thus reaffirmed, whilst national ownership of tax policy is reinforced. These judgments are of particular relevance to national governments, as well as to local and regional authorities, who now share responsibility for tax collection and public finance within a human rights-based framework.

4. Conclusion

The meaning of the subsidiarity principle in the Council of Europe is a concept which continues to develop. An examination of the case law of the ECtHR reveals that subsidiarity is not merely a theoretical concept. This is a genuine legal instrument. The Court employs this approach when adjudicating on contentious policy matters, including taxation. This area is often overlooked by scholars, despite its significance. The nexus between tax policy and human rights has never been more apparent. Local authorities (e.g., municipal councils) are assuming an increased workload. The organisation has now expanded its remit to include social protection, the building of resilient communities, and the promotion of fair governance. This development signifies the emergence of a novel and pivotal role for subsidiarity.

Subsidiarity also protects the Court's legitimacy. It shows that the ECtHR respects different legal traditions in each country. But subsidiarity does not mean that the Court should stay silent. In important cases, like *Bulves AD v. Bulgaria* and *Shchokin v. Ukraine*, the ECtHR made clear that it will act when tax rules are unfair or harmful. This judicious combination of respect and intervention has the potential to establish a more effective model for the collaboration of authorities at various levels. Furthermore, it demonstrates the significance of local and regional authorities (i.e., local self-government bodies) in contemporary Europe.

The findings of this article suggest new avenues for future research and practical reform. Firstly, it is

crucial to reinforce the involvement of local stakeholders, including local and regional authorities, in the implementation of human rights. These institutions are at the forefront of public service delivery and are best placed to apply the principles of the European Convention on Human Rights and the European Social Charter to everyday situations. However, they often lack the necessary tools, training and legal clarity to do so. Therefore, building their capacity must become a shared responsibility between national governments and European institutions.

Secondly, the principle of subsidiarity should be more closely integrated into the Sustainable Development Goals (SDGs) framework. SDG 11 ("Sustainable Cities and Communities") and SDG 16 ("Peace, Justice and Strong Institutions") are particularly relevant to local self-governance. However, their implementation in Europe remains fragmented and is often disconnected from the region's legal framework. Integrating the principle of subsidiarity into the implementation of the SDGs could empower local and regional authorities to act more confidently as protectors of rights and partners in sustainable development. It would also enable European institutions to establish a more consistent, multi-level governance model that connects global objectives with local circumstances.

Furthermore, linking the SDGs with European human rights law could provide local and regional

authorities with political guidance and changes to their legal status. When cities and regions base their actions on ECtHR case law or the European Social Charter, they are operating within enforceable legal frameworks. This is particularly important in policy areas such as housing, taxation, health and social protection. Subsidiarity ensures that legal commitments are realised through concrete local action, rather than remaining abstract. In this way, it connects human rights enforcement with institutional trust, transparency, and responsiveness.

Finally, this study makes a valuable contribution to the growing field at the intersection of law, fiscal policy and democratic governance. It proposes that taxation is not merely an economic instrument, but also a matter of justice and human rights. When viewed through the lens of subsidiarity, taxation becomes a shared responsibility between different levels of government. This approach encourages courts and lawmakers to consider coordination rather than control. Future research could build on this perspective by conducting empirical studies, making cross-country comparisons and carrying out legal analyses. This article lays the groundwork for such studies and asserts that subsidiarity serves as more than just a limitation on central authority; it offers a blueprint for a Europe that is fairer, more resilient, and more human-centred.

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