

Faculti Summary

<https://faculti.net/judicial-activism-and-judge-made-law-at-the-ecthr-2/>

This video video discusses the concept and implications of judicial activism, particularly in the context of the European Court of Human Rights (ECHR). Judicial activism is defined as judges prioritizing contemporary needs over established legal precedents and legislative deference, which can lead to judges "bending" the law to achieve desired outcomes based on non-legal grounds. This video video is contrasted with judicial lawmaking, which is an inherent part of legal interpretation and application.

The ECHR has faced criticism for being an activist court since its establishment, accused of overstepping its jurisdiction by expanding the scope of issues it addresses. This video video criticism comes from various levels, including legal scholars and domestic judges. The article argues that the concept of judicial activism may not be suitable for international courts, as it is rooted in domestic legal contexts, particularly that of the United States.

Instead of focusing on judicial activism, the article posits that judicial lawmaking better explains the ECHR's function. It identifies ten factors that accelerate judicial lawmaking within the court, including interpretation methods, the nature of legal texts, presence of positive obligations, applicable doctrines, case loads, and judicial turnover. This video video also emphasizes that legislative inactivity enables courts to step in and make judicial decisions in the absence of new legislation.

A key point noted is the principle of subsidiarity, which limits the ECHR's ability to generate law by ensuring that rights are protected primarily by domestic authorities. This video video principle emphasizes that the ECHR should only intervene after all domestic remedies have been exhausted. Recent developments suggest a trend toward procedural rather than substantive review, indicating the court's reluctance to impose new standards directly.

The article concludes that while the ECHR has historically produced a significant amount of judicial law since the 1970s, factors such as Russia's exit from the convention system and the reinforced principle of subsidiarity indicate that the court's output may have peaked. There are concerns over delays in processing cases and the sustainability of the court's capacity to address increasing applications effectively.