



**rights, or need to be weighed up against other aspects of the public interest.** It devolves this balancing exercise in large measure to national courts, thus recognising both their crucial role as the first available forum for the protection of human rights, and their expertise regarding matters pertaining to national law

It is difficult to describe the reach and functioning of this doctrine with precision. It is important to highlight that the margin of appreciation does not provide blanket exceptions in the application of rights. Rather, it ensures that human rights under the Convention system develop in a pluralistic pattern, which is mindful of national contexts, as long as the minimum floor set by the Convention is effectively protected.

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It would be misleading to suggest that the margin of appreciation doctrine is applied consistently in every case, as individual circumstances are crucial to the proper application of human rights. However, while it is not technically bound by its own precedent, the ECtHR does in practice respect it. The application of the margin of appreciation follows principles established over many years, going back to its earliest cases<sup>1</sup>.

The rationale of the margin of appreciation was first articulated in the *Handyside* judgment, in 1976<sup>2</sup>. There, the ECtHR made clear that a sequence is involved in the process of securing human rights: an assessment of the compatibility of national measures with the Convention is first made by **national courts**; and subsequently a review of this assessment is undertaken by the **ECtHR** (if needed). Crucially, the Court acknowledged that **national authorities are better placed to assess the content of limitations based on contextual considerations** (for instance, public morals) as well as the degree to which the limitations imposed are necessary.

Standards on these issues vary amongst different countries. It is not the Court's role to replace national views with a uniform standard, but rather to coordinate the protection of human rights in light of the differences encountered amongst the 47 member states. It is however important to note that the principle of **proportionality**, (i.e. whether the national measures are appropriate and do not go beyond what is necessary to meet a specific objective), has a clear impact on the application of the margin of appreciation doctrine. Another relevant consideration for the Court, which has acquired increasing importance over the years, is an individual's **vulnerability**, which can impact the degree to which a particular measure is (considered) personally<sup>3</sup>

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