What judges talk about when they talk about proportionality

Lord Reed of Allermuir*

The title of my lecture draws on the title of a short story by the American writer Raymond Carver.[1] The story's central theme is captured by one of the characters who says, "it ought to make us feel ashamed when we talk like we know what we're talking about when we talk about love." The point is that love is something we think is familiar, when in fact, our understanding of it is limited and the language we use to talk about it is inadequate. I thought of this story because proportionality review in the human rights context can be almost as confusing, if possibly less likely to cause heartache. So, I want to use the time I have this evening to clarify where proportionality comes from, how it has developed in UK domestic law, and how it is (or should be) applied by judges today.

Where does proportionality come from?

Proportionality is a standard of judicial review applied by the courts when determining whether a public authority's act or omission is incompatible with the rights protected by the European Convention on Human Rights and Fundamental Freedoms ("the **Convention**")[2] and given effect in our domestic law by the Human Rights Act 1998.

The Human Rights Act came into force in October 2000, so proportionality as a standard of review is a relatively recent development in our law. But the idea that proportionality is an aspect of justice is much older, and can be traced back via Aquinas to Aristotle's Nicomachean Ethics.[3] References to proportionality can be found in Roman law and in the Magna Carta of 1215, which holds that, "[f]or a trivial offence a free man shall be fined only in proportion to the degree of his offence…" The development of the concept as a

---

* President of the Supreme Court of the United Kingdom. This lecture was delivered at Oxford University on 13 May 2026, at an event to mark the publication of the 15th edition of the Oxford University Undergraduate Law Journal. I am indebted to my judicial assistant, Rebecca Fry, for her assistance in the preparation of the lecture.

[1] Raymond Carver, *What We Talk About When We Talk About Love* (Knopf, 1981).
[2] A copy of the Convention is available at: European Convention on Human Rights.
[3] This summary is based on that given in *Bank Mellat v HM Treasury (No 2)* [2013] UKSC 39 ("*Bank Mellat*"), [68] (Lord Reed). For further detail, see Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (Cambridge University Press, 2012), Ch 7.

standard in public law began during the Enlightenment, when the relationship between citizens and their rulers came to be considered in a new way, reflected in the concepts of the social contract and of natural rights. As Blackstone wrote in his *Commentaries on the Laws of England*, the concept of civil liberty comprises "natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public".[4]

The idea that the state should limit natural rights only to the extent necessary developed in Germany into a public law standard known as Verhältnismäβigkeit, or proportionality. From its origins in German administrative law, where it forms the basis of a rigorously structured analysis of the validity of legislative and administrative acts, the concept of proportionality came to be adopted in the case law of the Court of Justice of the European Union and the European Court of Human Rights ("the **European court**").[5]

The UK had no parallel concept of proportionality in our domestic law. Indeed, for most of our history, administrative law in general was relatively undeveloped. The Dean of the Law Faculty of Paris University reported that, when he asked the great Victorian constitutional scholar A V Dicey about the status of administrative law in England, Dicey responded: "In England we know nothing of administrative law; and we wish to know nothing."[6]

A renaissance of administrative law began in England as late as the 1960s, building on an older body of case law and adapting it to modern methods of government. Remedies in public law became more readily available in England and Wales with the introduction in the 1970s of the application for judicial review. But some of the most significant changes in this area occurred as a result of Parliament's implementation of the Convention in our domestic law by means of the Human Rights Act.

The Convention is an international treaty which came into force in 1953. The UK played a major role in drafting the Convention, and was the first country to ratify it, in 1951. The Convention sets out minimum international standards for the protection of individual rights

---

[4] Sir William Blackstone, *Commentaries on the Laws of England*, Vol 1 (1765-1769), pp 121-122. Available at: The Project Gutenberg eBook of Commentaries on the Laws of England, Book 1 of 4, by William Blackstone.

[5] For discussion of the adoption of proportionality by the European court, see Marc-André Eissen, "The Principle of Proportionality in the Case-Law of the European Court of Human Rights" in Macdonald, Matscher and Petzold, eds, *The European System for the Protection of Human Rights* (Martinus Nijhoff, 1993) Ch7. See also Jeremy McBride, "Proportionality and the European Convention on Human Rights" in Evelyn Ellis, ed, *The Principle of Proportionality in the Laws of Europe* (Hart Publishing, 1999), Ch 2. See *R (Lumsdon) v Legal Services Board* [2015] UKSC 41, [23]-[26] (Lord Reed) for discussion of the differences between the principle of proportionality as it applies in EU law and proportionality under the Convention.

[6] Peter Leyland and Gordon Anthony, *Administrative Law,* 8th edn (Oxford University Press, 2016), para 1.1.

and freedoms. Some of these rights are expressed in absolute terms, including the right to life, the prohibition of torture, and the right to a fair trial,[7] while others are expressly qualified, including the right to respect for private and family life, the right to freedom of thought, conscience and religion, and the right to freedom of expression.[8] State interference with qualified rights is permissible where the interference is "prescribed by law" and "necessary in a democratic society" to protect specified interests or the rights and freedoms of others. This is where proportionality comes in: restrictions or inferences with Convention rights must be a proportionate means of achieving a legitimate aim. The same approach can also apply in relation to some of the rights which are not expressly qualified, such as the right to a fair trial.

The UK has what is sometimes called a "dualist" system, which means that international and domestic law operate on different planes. Treaties such as the Convention are binding on the UK on the international plane, but they do not form part of the law of the UK unless Parliament passes legislation to implement them.[9] This is a necessary corollary of Parliamentary sovereignty.[10]

It follows from this that, until the Human Rights Act came into force, Convention rights could not be enforced by the UK courts. Complaints that the UK had failed to meet its obligations under the Convention could only be brought before the European court in Strasbourg, which was established to ensure that the Convention rights could be enforced.[11] Complaints could be lodged by an individual or by one or more of the other contracting states.[12]

The European court does not decide cases in the same way as the UK domestic courts. It is not bound by its own previous decisions,[13] though its case law establishes that "in the interests of legal certainty, foreseeability and equality before the law … it should not depart, without good reason, from precedents laid down in previous cases."[14] Where the precedent is "a relatively recent and comprehensive judgment of the Grand Chamber", it is likely to be

[7] Convention, articles 2, 3 and 6.
[8] Convention, articles 8, 9 and 10.
[9] *JH Rayner (Mincing Lane) Ltd v Department of Trade and Industry* [1990] 2 AC 418, 500 (Lord Oliver). See also *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5 ("*Miller I*"), [56], [167] and [244].
[10] *R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26, [78] (Lord Reed), citing *Miller I*, ibid.
[11] Convention, article 19.
[12] Convention, articles 33 and 34. The UK accepted the right of individual petition to the European court in 1966.
[13] Convention, article 46.
[14] *Mackay and BBC Scotland v the United Kingdom* (Application no 10734/05) 7 December 2010, [22].

given greater weight than older section judgments.[15] But this does not mean that precedents are analysed and applied in the way they are here.

One reason for this is that most of the judges on the European court come from civil law jurisdictions.[16] The European court's judgments usually distinguish between the relevant "general principles" and their application to the facts of the case. A common lawyer would generally take the view that both the principles *and* the way in which they have been applied to particular sets of facts have precedential value. But, as a Polish judge on the European court has explained, to a civil lawyer, "what matters most is a consistency in the formulation of the relevant general principles."[17] Indeed, they tend to be repeated verbatim from one case to the next, so that a change in the formulation is usually a significant event. Consistency in the application of those principles is another matter.

I remember when I sat for the first time on the European Court of Human Rights. When the court deliberated on the case we had heard, and it was my turn to speak, I based my remarks on an analysis of the court's previous judgments bearing on the question in issue, which I had prepared in the manner I took for granted. One of the other judges, from a civil law jurisdiction, remarked that she had never before thought about law in that way.

This explains why so many decisions of the European court seem to turn on their facts. In a recent appeal to the UK Supreme Court concerned with protest rights, which are protected by the right to freedom of expression in article 10 of the Convention, both sides were able to cite European court case law in support of their position.[18] The European court judgments all set out more or less the same general principles, but those principles were applied differently in different contexts, depending on whether they were Russian or Turkish cases where the authorities were using anti-terrorism laws as a means of suppressing political dissent, or French or German cases where similar laws were being used to prevent the encouragement of terrorism. But that difference in approach is not readily apparent from the reasoning.[19]

---

[15] *Jones and others v the United Kingdom* (Application nos 34356/06, 40528/06), 14 January 2014, [194].
[16] Articles 20-23 of the Convention concern the number of judges of the European court, the criteria for office, the election of judges and their terms of office and dismissal.
[17] Krzysztof Wojtyczek "Precedent in the system of the European Convention on Human Rights" in Monika Florczak-Wątor (ed) *Constitutional Law and Precedent: International Perspectives on Case-Based Reasoning* (Routledge, 2022), Ch 11, p 243.
[18] *R v ABJ; R v BDN* [2026] UKSC 8.
[19] Compare, for example, *Leroy v France* (Application no 36109/03), 2 October 2008 with *Novaya Gazeta and others v Russia* (Application nos 11884/22 and 161 others), 11 February 2025.

How has proportionality developed in UK domestic law?

When the UK ratified the Convention in 1951, it was not considered necessary to introduce any new domestic laws, because the rights and freedoms guaranteed by the Convention were thought to be protected already by domestic causes of action[20], and indeed they generally were. For example, I remember acting as counsel in a case where the complaint was that the abuse of children by a family member had constituted a violation by the state of articles 3 and 8. It was necessary to examine whether the protection given to the children under our criminal law by the police, the prosecution service and the courts, under the law of tort (considering the availability of damages), under the criminal injuries compensation scheme, and under public law, considering the role of social services and of family courts discharged the state's obligations under those articles.

Our domestic law continues to be the first port of call for anyone whose rights have been infringed. Two familiar examples concern interests protected by the right to privacy and family life in article 8 of the Convention. Article 8 encompasses an individual's interest in their reputation. But in English law, that interest is protected primarily by the law of defamation, so recourse to the Convention is normally unnecessary, as Lord Briggs and I recently explained in *Abbasi v Newcastle upon Tyne NHS Foundation Trust*.[21] Article 8 also protects an individual's interest in privacy in their home. But in English law, that is dealt with by the law of nuisance. So, as Lord Leggatt explained in the case of *Fearn v Board of Trustees of the Tate Gallery*, "[t]here is no need or justification for invoking human rights law when the common law has already developed tried and tested principles which determine when liability arises" for the relevant type of legal wrong.[22]

So, the Human Rights Act complements, rather than supplants, our long-standing domestic tradition. It should be seen as a failsafe, not the starting point. Human rights continue to be protected principally by our domestic law, interpreted and developed in accordance with the Human Rights Act when appropriate.

---

[20] White Paper "Rights Brought Home: The Human Rights Bill" (Command Paper No. Cm 3782, October 1997) at [1.11], available at https://www.gov.uk/government/publications/the-human-rights-bill.
[21] *Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2025] UKSC 15, [89] (Lord Reed and Lord Briggs).
[22] *Fearn and others v Board of Trustees of the Tate Gallery* [2023] UKSC 4, [113] (Lord Leggatt). See also [206] (Lord Sales).

One of the Act's primary aims was to enable litigants to "argue for their rights in the British courts".[23] The benefits of this are twofold. First, those bringing the claims can avoid the cost and delay associated with bringing a claim before the European court. Secondly, potential human rights violations can be considered by UK judges, with greater understanding of the relevant context.

The proof of these benefits is in the pudding: since the Human Rights Act came into force, the number of cases going to Strasbourg from the UK has fallen and is now one of the lowest by population of all 46 Council of Europe member states.[24] Cases in which the UK has been held to have violated the Convention have become rare.

Before the Human Rights Act, the UK courts were cautious about adopting proportionality as a ground of judicial review.[25] Its possible adoption was mentioned in the 1980's by Lord Diplock in the GCHQ case,[26] but it was not formally recognised until *Ex parte Daly*, a case decided in 2001, after the Human Rights Act came into force.[27]

The key provisions of the Human Rights Act for present purposes are sections 2, 3, 4 and 6. Section 2 requires the UK domestic courts to take the case law of the European court into account where we consider it to be relevant. The European court's decisions do not bind the UK courts, but it is now well-established that, in the absence of some special circumstances, we will follow its "clear and constant jurisprudence".[28] Section 3 requires the courts to read and give effect to primary and subordinate legislation in a way which is compatible with Convention rights, so far as it is possible for us to do so. Section 4 empowers the courts to make a declaration of incompatibility where we are satisfied that a provision of primary legislation is incompatible with a Convention right. Section 6(1) makes it unlawful for a public authority, including the courts and tribunals, to act in a way which is incompatible with a Convention right.

---

[23] White Paper (n 21), [1.14].
[24] In 2024, the UK had the third lowest rate of applications of all Council of Europe member states. See Ministry of Justice, "Responding to human rights judgments: Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2024-2025", December 2025, p. 10. Available at: Responding to human rights judgments - Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2024–2025. The year before, the UK had the lowest number of applications of all member states. See Ministry of Justice, "Responding to human rights judgments: Report to the Joint Committee on Human Rights on the Government's response to human rights judgments 2023-2024", November 2024, p. 10. Available at Responding to human rights judgments.
[25] See, for example, *R v Secretary of State for the Home Department, Ex parte Brind* [1991] 1 AC 696.
[26] *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 410 (Lord Diplock).
[27] *R v Home Secretary, Ex parte Daly* [2001] 2 AC 532.
[28] *R (Ullah) v Special Adjudicator* [2004] 2 AC 323, [20] (Lord Bingham).

There are three points worth making at this stage. The first is that the UK courts will not follow the case law of the European court if we think it has misunderstood some aspect of our domestic law. This point was made clear in relation to a case called *Al-Khawaja* which concerned the use of hearsay evidence in the trials of people convicted of serious crimes. Two of the appellants had been convicted of causing grievous bodily harm, with intent, to a man called Peter Rice, and two others were convicted of kidnapping a young woman called Hannah Miles. In each case, a written statement from the victim was placed before the jury, but the victims did not give evidence. This was because Mr Rice died before the trial, and Ms Miles ran away in fear when the trial of her kidnappers was about to start. An earlier European court judgment held that a criminal trial would be unfair, contrary to article 6 of the Convention, if a statement was the sole or decisive basis for the conviction.[29] But the Supreme Court declined to apply this rule. We set out clear reasons for this in a case called *Horncastle*,[30] and the European court responded by revising its approach.[31]

The second point is that, while the domestic courts are required to "keep pace with the Strasbourg jurisprudence as it evolves over time",[32] it is not our function as a domestic court of one of the 46 contracting parties to develop new principles of interpretation of the Convention: that is the function of the European court.

The third point is that, as an international court applying a treaty which applies to a large number of countries with varied cultures and politics, the European court rightly affords a certain margin of appreciation to domestic authorities, which "[b]ecause of their direct knowledge of their society and its needs, … are in principle better placed than the international judge to appreciate what is 'in the public interest'."[33] The width of the margin of appreciation will vary according to factors including " the nature of the Convention right in issue, the importance of that right for the individual, the nature of the activity involved in the case, the extent of the interference, and the nature of the state's justification."[34] For example, the margin of appreciation is relatively narrow in relation to measures designed to restrict political discussion and debate. On the other hand, the European court has shown much greater deference on issues such as economic policy and national security, where it respects the

[29] *Al-Khawaja and Tahery v the United Kingdom* (2009) 49 EHRR 1.
[30] *R v Horncastle* [2009] UKSC 14.
[31] *Al-Khawaja v the United Kingdom* (2012) 54 EHRR 23.
[32] *Ullah* (n 28), [20] (Lord Bingham).
[33] *James v The United Kingdom* (1986) 8 EHRR 123, [46].
[34] Jessica Simor, *Human Rights Practice* (Sweet & Maxwell, 2026), [1.084].

institutional expertise and constitutional legitimacy underlying the decisions made by the national authorities.[35]

For a time, there was a misunderstanding that the margin of appreciation afforded to each of the Council of Europe member states allowed room for domestic gold-plating of Convention rights. The high water mark was a case called *Re G*, which concerned legislation that barred unmarried couples from adopting children.[36] The House of Lords held the legislation to be irrational according to conventional standards of judicial review. But they also considered how the European court would approach the legislation. A majority considered that, even if the European court would consider the legislation to fall within the UK's margin of appreciation, the domestic courts could still hold that it violated Convention rights.[37]

These comments were obiter, but they were relied on in an appeal to the Supreme Court in a case called *Elan-Cane* on the question whether the UK government's refusal to issue a passport with a non-gendered marker to a person who identified as non-gendered breached the right to private life protected by article 8 of the Convention (either alone or read with article 14, which prohibits discrimination).[38] The Supreme Court explained that the alternative reasoning in *Re G* should not be followed because it would encroach substantially on Parliamentary sovereignty.[39] As Lord Hope explained in an earlier case, "Parliament never intended… to give the courts of this country the power to give a more generous scope to the Convention rights than that which was to be found in the jurisprudence of the Strasbourg court." To do so would change them "from Convention rights… into free-standing rights of the court's own creation."[40]

How should proportionality be applied?

As I have explained, the Human Rights Act has required the UK domestic courts to become more closely involved in reviewing decisions taken by the government and other public authorities to ensure they meet Convention standards.

---

[35] *R v ABJ* (n 18), [106] (Lord Reed).
[36] *Re G (Adoption: Unmarried Couples)* [2008] UKHL 38.
[37] Ibid, [30]-[31] and [36]-[37] (Lord Hoffman), [50] (Lord Hope), [119]-[120] (Lady Hale), and [126]-[130] (Lord Mance).
[38] *R (Elan-Cane) v Secretary of State for the Home Department* [2021] UKSC 56.
[39] Ibid, [90] (Lord Reed). See also *R (AB) v Secretary of State for Justice* [2021] UKSC 28.
[40] *Smith v Ministry of Defence* [2013] UKSC 41, [43] (Lord Hope).

Proportionality is not relevant in every human rights case. Sometimes, we do not get to that stage because a more absolute protection has been violated. For example, as I have explained, the Convention requires that any interference with a qualified right is "prescribed by" or "in accordance with the" law. So, in a case called *Craig* we allowed an appeal by a man who the US government wanted to extradite to face trial in the US for alleged securities fraud.[41] This was because the Government had unlawfully failed to commence forum bar provisions enacted by Parliament. The Supreme Court held that this failure meant the extradition proceedings were not "in accordance with the law". As I explained in that case, "[o]nly if the test of legality is satisfied does the question arise whether the measures in question are necessary for some legitimate purpose and represent a proportionate means of achieving that purpose."[42]

Where proportionality is relevant, it does not permit the courts to engage in a full merits review of executive or legislative decisions; the court cannot simply substitute its own view for that of the original decision-maker. Instead, the court is required to decide whether the measure's restriction of Convention rights is proportionate to the legitimate aim it pursues, having regard to the width of the margin of appreciation permitted at the international level.[43]

The UK courts have developed a structured approach to proportionality, derived from case law under Commonwealth constitutions and Bills of Rights, including in particular the Canadian Charter of Fundamental Rights and Freedoms of 1982. The leading authority is now *Bank Mellat v HM Treasury (No 2)*,[44] which concerned the imposition of sanctions against entities whose activities were thought to support the nuclear programme in Iran. The UK Supreme Court was asked to decide whether excluding one particular Iranian bank from the London financial markets was a proportionate means of protecting UK national interests from the threat posed by that nuclear programme. In that case, I adopted a four part analysis of proportionality along Canadian lines.[45]

This holds that it is necessary to determine "(1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is

---

[41] *Craig v HM Advocate (for the Government of the United States of America)* [2022] UKSC 6.
[42] Ibid, [50] (Lord Reed).
[43] See further *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30, [120]-[130] (Lord Sales and Lady Rose).
[44] *Bank Mellat* (n 3).
[45] Ibid, [74] (Lord Reed). As noted at [73], this four part analysis is derived from the decision of the Supreme Court of Canada in *R v Oakes* [1986] 1 SCR 103 (Dickson CJ). See also Lord Sumption, [20].

rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter."[46] To my mind, this approach works better in a domestic setting, and in the context of our approach to legal reasoning, than the less structured approach taken by the European court. By breaking the proportionality assessment down into distinct elements, it "can clarify different aspects of such an assessment, and make value judgments more explicit."[47]

The first three elements of the proportionality test had been affirmed in *Ex parte Daly*.[48] But the fourth element – namely, the question whether the impact of the rights infringement is disproportionate to the likely benefits of the measure in issue – was not clearly acknowledged until *Bank Mellat* was decided, almost ten years later. As Canadian Chief Justice McLachlin has pointed out, its inclusion is essential because the first three elements of the test are "anchored in an assessment of the law's purpose. Only the fourth branch takes full account of the 'severity of the deleterious effects of the measure on individuals or groups".[49]

I want to use the rest of our time to address three common misunderstandings about proportionality. The first point is that proportionality does not prevent the legislature from enacting general rules, as we made clear in a case called *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill*.[50] Indeed, the legal philosopher, Lon Fuller, has argued that "law *is* the enterprise of subjecting human conduct to the governance of rules."[51] These rules are necessarily general: as another philosopher, H L A Hart, has explained, "[i]n any large group, general rules, standards and principles must be the main instrument of social control, and not particular directions given to each individual separately."[52] A rule can be both general and proportionate. The European court has acknowledged in a case called *Animal Defenders International* that "a state can, consistently with the Convention, adopt general measures which

---

[46] Ibid.
[47] Ibid.
[48] *Daly* (n 27), [27] (Lord Steyn), affirming the formulation set out in the Privy Council case of *De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69, 80 (Lord Clyde).
[49] *Alberta v Hutterian Brethren of Wilson Colony* [2009] 2 SCR 567, [76] (McLachlin CJ). McLachlin CJ's explanation of this critical difference between the first and fourth elements of the proportionality test was cited with approval in *Bank Mellat* (n 3), [76] (Lord Reed) and in *R (Lord Carlile of Berriew) v Secretary of State for the Home Department* [2014] UKSC 60, [149] (Lord Kerr).
[50] [2022] UKSC 32.
[51] Lon Fuller, *The Morality of Law* (Yale University Press, 1969), p 106. Italics added.
[52] H L A Hart, *The Concept of Law* 2nd edn (Oxford University Press, 1994), p. 124.

apply to pre-defined situations regardless of the individual facts of each case even if this might result in individual hard cases."[53]

This brings me to my second point, which is that proportionality is not, and should not be, a matter for the courts alone. The European court's case law establishes that, in order to determine the proportionality of a general measure, "the court must primarily assess the legislative choices underlying it."[54] In relation to legislation, proportionality assessments are initially for law-makers. It is, therefore, essential for the courts to understand the consideration given to issues bearing on proportionality in the law-making process. That is why the European court has said that it is interested in the "quality of the parliamentary… review" and why it will give states a greater margin of appreciation where it can see that issues bearing on proportionality were considered carefully by the national authorities.[55] So the courts will have regard to the balance struck by the public authority and will afford its view appropriate weight, depending on the institutional competence and the constitutional responsibility of that authority relative to the court.[56]

My third point is that proportionality is a question of law, not a question of fact, as we have made clear in recent cases such as *Safe Access Zones, Shvidler v Secretary of State for Foreign , Commonwealth and Development Affairs* and *R v ABJ*.[57] This matters because, as you will know, questions of fact are usually about what has happened, and the findings of the trial judge or jury on them are generally final. Questions of law concern the legal consequences of what has happened, and can be determined by the appellate courts on appeal.[58]

At the beginning of this talk, I mentioned Raymond Carver and his story about the limits of language to understand and explain love. I hope I have shown that proportionality is nothing like so mysterious. Judges should be as clear and precise as possible in their judgments, so that those reading them can understand what proportionality means and how it is being applied by the courts. More than 25 years after the Human Rights Act came into force, what

---

[53] *Animal Defenders International v the United Kingdom* (Application no 48876/08) (2013) 57 EHRR 21, [106].
[54] Ibid, [108].
[55] Ibid.
[56] Eg in relation to foreign policy (*R (Carlile) v Secretary of State for the Home Department* [2014] UKSC 60), national security (*U3 v Secretary of State for the Home Department* [2025] UKSC 19), economic policy (*R (SC) v Secretary of State for Work and Pensions* [2021] UKSC 26); see also *DA v the United Kingdom*, 17 March 2026); cf assessment of evidence (*R (AAA (Syria) v Secretary of State for the Home Department* [2023] UKSC 42).

[57] *In re Abortion Services (Safe Access Zones) (Northern Ireland) Bill* [2022] UKSC 32 ("*Safe Access Zones*"), [30], *In re JR123* [2025] UKSC 8, [35], *Shvidler* (n 43), [145], and *R v ABJ* (n 18), [139].
[58] *Shvidler* (n 43), [142]-[165].

judges talk about when they talk about proportionality need be no more difficult to understand than any other aspect of the law.