



The provisions of section 37 of the Criminal Procedure and Investigation Act 1996 apply to the proceedings in these cases. No order has been made in the Crown Court that section 37(1) shall not apply. An order is now made that section 37(1) shall not apply to this judgment. Unless and until any further order is made, only this judgment and that of the Court of Appeal, and those particulars identified in section 37(9) of the 1996 Act, may be reported until the conclusion of both sets of proceedings in the Crown Court.

## Press Summary

26 February 2026

**R v ABJ (Appellant); R v BDN (Appellant)**

**[2026] UKSC 8**

*On appeal from: [2024] EWCA Crim 1597*

**Justices:** Lord Reed (President), Lord Lloyd-Jones, Lord Sales, Lord Burrows and Lord Richards

### Background to the Appeal

These appeals concern the criminal offence in section 12(1A) of the Terrorism Act 2000 (“the **section 12(1A) offence**”). Under section 12(1A), a person commits an offence if they: (a) express an opinion or belief that is supportive of a proscribed organisation, and (b) in doing so, are reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation. The Supreme Court is asked to decide whether the terms of this offence interfere disproportionately with the appellants’ right to freedom of expression protected by article 10 of the European Convention on Human Rights (“the **Convention**”).

The appellants, ABJ and BDN, have both been charged with offences under section 12(1A). They are alleged to have expressed an opinion or belief that is supportive of Hamas, one of the proscribed organisations listed in Schedule 2 to the Terrorism Act 2000. Neither ABJ nor BDN’s cases have gone to trial, so the facts have not yet been established. However, the following facts are agreed for the purposes of these appeals.

ABJ gave a speech on 8 October 2023, the day after the attacks on Israel by Hamas, in which over 1,200 people were killed and 251 people were taken hostage. The speech was given in Brighton city centre as part of a Palestine Solidarity Campaign event. It lasted about four minutes and included words describing the events of 7 October as “a victory”. Police officers

present at the event took no action, but ABJ was arrested and later charged after edited footage of her speech was published online by the Daily Mail. BDN's indictment arises out of an incident on 17 October 2023, when he stood outside the gates to Downing Street holding a placard and a small loudhailer. One side of the placard read: "HAMAS is the vanguard of the Resistance – Avi Shlaim". The other side read: "You won't destroy HAMAS – Tony Blair." BDN asked a passer-by to film him using BDN's phone. He then set off a short alarm sound on the loudhailer and used it to express his support for "the physical force resistance in Palestine" in the presence of passing members of the public. The film was never livestreamed or shared by any means. BDN was arrested later the same day, while holding the placard in another part of Westminster.

Preparatory hearings were held in both cases to clarify the applicable law. In ABJ's case, the judge held that, if the ingredients of the section 12(1A) offence were proved, there was no need for the jury to conduct a separate assessment of whether a conviction would interfere disproportionately with ABJ's right to freedom of expression under article 10. In BDN's case, the judge rejected BDN's contention that the section 12(1A) offence was too uncertain to be "prescribed by law" as required by the Convention. The judge also held that establishing the ingredients of the section 12(1A) offence was sufficient to ensure that a conviction was compatible with BDN's right to freedom of expression under article 10.

Both ABJ and BDN appealed; their appeals were heard together by the Court of Appeal. The Court of Appeal dismissed the appellants' appeals, but certified the following point of law of general importance as being involved in each case: Do the terms of section 12(1A) represent a disproportionate interference with the appellant's rights under article 10 of the Convention? If so, is it possible to read down the terms of the offence to make them compatible?

## **Judgment**

The Supreme Court unanimously dismisses ABJ and BDN's appeals. It holds that the section 12(1A) offence does not interfere disproportionately with defendants' rights to freedom of expression under article 10 of the Convention. It follows that there is no need for trial courts to carry out separate proportionality assessments to ensure that each defendant's conviction is compatible with article 10. Lord Reed gives the judgment, with which the other members of the Court agree.

## **Reasons for the Judgment**

### **What are the ingredients of the section 12(1A) offence?**

Under section 12(1A), a person commits an offence if they: (a) express an opinion or belief that is supportive of a proscribed organisation, and (b) in doing so, are reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation [57].

The requirements of subsection (a) can be broken down into four elements [58]. The first is that a person expresses an opinion or belief. Holding the opinion or belief is not enough; it must be expressed [59], [82(1)]. Secondly, the opinion or belief must be supportive of an organisation. This is a question of fact to be judged objectively by the jury; it depends on how the words would naturally and reasonably have been understood in the circumstances in which they were spoken or written. Expressing an opinion or belief which coincides with the organisation's aims or beliefs is not sufficient. For example, a person can express support for Palestinian statehood without expressing support for Hamas [60]-[67], [82(2)]. Thirdly, the person who expresses the opinion or belief must have known that it is supportive of the organisation. This is because every statutory offence must be committed knowingly, unless the legislation shows a clear intention otherwise [68]-[70], [82(3)].

Fourthly, the belief or opinion must have been expressed at a time when the organisation was proscribed. Proscription is a matter of law; an organisation is proscribed if it is included in the list set out in Schedule 2 to the Terrorism Act 2000 (or operates under the same name as an organisation listed in that Schedule). There is no doubt that Hamas was a proscribed organisation at the time of ABJ and BDN's alleged offences. It does not matter if ABJ or BDN did not know this; it is a general principle of criminal law that ignorance of the law is no defence. This does not impose a disproportionate burden on persons who wish to exercise their freedom of expression because it is easy for anyone to find out whether an organisation is proscribed by checking the list published by the government online [71]-[74], [82(4)].

Subsection (b) sets out a requirement that, in expressing an opinion or belief that is supportive of a proscribed organisation, the defendant is reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation. The necessary recklessness is therefore in respect of a result [75]. The words "person to whom the expression is directed" import intention. The defendant must have intended that their words should be read or heard by that person. This does not mean that they must necessarily have known of that specific individual. For example, if a speech is addressed to a crowd, it will have been directed to every person in that crowd. On the other hand, ABJ did not direct her words to those who watched the recording of her speech posted online by the Daily Mail [76].

Next, it must be shown that the defendant was "reckless", which is a well-established concept in English criminal law. Recklessness has two aspects. The first is that the defendant was aware of a risk that the result will occur (here, that the person to whom the expression is directed will be encouraged to support a proscribed organisation). It will be necessary to assess the defendant's state of mind to determine whether or not the defendant is aware of the risk in the relevant circumstances, which will include the characteristics of the persons to whom the expression was addressed. The second aspect of recklessness is that it must, in the circumstances known to the defendant, have been unreasonable for them to take the risk that a person to whom the expression is directed will be encouraged to support a proscribed organisation. Not all risk-taking is reckless; the reasonableness of the defendant's decision to take the risk must be assessed objectively in light of the relevant circumstances [77]-[81], [82(5)-(7)].

### **Is the section 12(1A) offence compatible with article 10 of the Convention?**

Yes. The parties agree that the statements made by ABJ and BDN are protected by article 10 [87]. However, article 10 is a qualified right, which means that restrictions on freedom of expression will be justified if they are "prescribed by law", pursue a legitimate aim, and are "necessary in a democratic society" [88]-[89]. The Supreme Court holds that the section 12(1A) offence, as explained above, can be justified according to this test. It follows that, if all of the ingredients of the offence are proved beyond reasonable doubt, a conviction will not interfere disproportionately with defendants' article 10 rights [129], [134].

The Supreme Court reaches this conclusion for the following reasons. First, the terms of section 12(1A) are sufficiently clear to be "prescribed by law"; they enable individuals to regulate their conduct, if necessary after taking legal advice. Section 12(1A) is no more difficult to interpret than other counter-terrorism legislation held by the European Court of Human Rights ("the **European court**") to meet this standard [90]-[97].

Secondly, the section 12(1A) offence is designed to combat radicalisation (ie the use of speech or writing to encourage others to join or support terrorist organisations and to follow their beliefs). Experts considered this to be the most serious problem facing counter-terrorism at the time section 12(1A) was introduced. The evidence presented to Parliament during the passage of the legislation demonstrates that there is a real risk of terrorist attacks in the United Kingdom and elsewhere carried out by individuals who have been encouraged by the words of others (for example, through radicalisation online). It follows that section 12(1A) pursues a number

of the legitimate aims mentioned in article 10(2): the protection of national security and public safety, the prevention of disorder or crime, and the protection of the rights of others, within the UK and other countries. These have been recognised by the European court as legitimate aims of counter-terrorism legislation. There is no need for the aims pursued by section 12(1A) to focus on the UK alone; the European court has recognised that the fight against international terrorism may pursue a legitimate aim [33]-[36], [40]-[44], [53]-[55], [98]-[102].

Thirdly, the restrictions on freedom of expression imposed by section 12(1A) are “necessary in a democratic society.” The Supreme Court recognises that content-based restrictions on freedom of expression require a compelling justification, particularly in the context of political speech [103]. However, having considered the relevant case law of the European court, it concludes that the restrictions imposed by section 12(1A) are justified [110]-[129].

To begin with, the section 12(1A) offence was introduced by Parliament to respond to the particular terrorist threat posed by radicalisation. The evidence described above establishes that there was a pressing social need for the offence. Deciding where and how to balance the value of freedom of expression against the need to combat terrorism is a highly sensitive matter falling primarily within the responsibility of the elected national authorities, here, the Government and Parliament. Judges must recognise the institutional expertise and constitutional legitimacy which underpin the decisions of these elected authorities. For this reason, the European court has accepted that states must enjoy a wider margin of appreciation when combating terrorism [103]-[106]. The next point is that the section 12(1A) offence only restricts expressions of support for organisations, like Hamas, that have been proscribed in accordance with the procedure set out in the Terrorism Act 2000, after the Government has decided and Parliament has accepted that the organisation is engaged in terrorism [107]-[108]. In addition, section 12(1A) does not prohibit the expression of views or opinions which are supportive of the aims of a proscribed organisation, such as ending the Israeli occupation of Palestinian territory. It only prohibits the reckless encouragement of support from others for the proscribed organisation [109].

The Supreme Court’s conclusion that the ingredients of the section 12(1A) offence themselves ensure that a defendant’s conviction does not interfere disproportionately with their rights under article 10 is subject to two important qualifications. First, the jury must be sure that each of the ingredients of the section 12(1A) offence have been proved to the criminal standard before they are entitled to convict the defendant. If it would not be possible for a reasonable jury to reach that conclusion on the basis of the evidence before them, the trial judge will have a duty to uphold a submission of no case to answer. Secondly, the trial judge is required by the Convention and by domestic law to ensure that any sentence they impose following conviction is proportionate [83], [129]-[133], [138].

### **Is it necessary for the trial court to conduct a separate proportionality assessment?**

No. The Supreme Court rejects the submission that the trial court is required to carry out a separate proportionality assessment to ensure that each defendant’s conviction is compatible with article 10. This is because the proportionality of the section 12(1A) offence has already been assessed, first by the Government in bringing forward the legislation which became section 12(1A), and secondly, by Parliament when it considered whether to enact the legislation. The proportionality of convictions under section 12(1A) has also been considered by the courts below and by the Supreme Court in the present case. It follows that there is no need for further assessments to be carried out by trial courts. Their function is, rather, to determine whether all of the ingredients of the section 12(1A) offence have been proved to the criminal standard on the facts of each case. The submission that compatibility with article 10 should be left to the jury is unattractive, in any case, since compatibility with Convention rights is a question of law, not a question of fact [135]-[139].

*References in square brackets are to paragraphs in the judgment.*

**NOTE:**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)**