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ON 22 March 2022, the then Foreign Secretary, Liz Truss, announced sanctions targeting entities "supporting Russia's illegal invasion" of Ukraine, such as a Russian drone manufacturing company and the Wagner group. Amongst those sanctioned was Mr. Shvidler – a British citizen who was not, in fact, accused of supporting the Russian invasion, nor of any wrongdoing, nor of being an associate of President Putin or even involved in Russian politics.

The basis for designating Mr. Shvidler, at least as the case was later put in court, was, first, that he was an associate of Mr. Roman Abramovich, then owner of Chelsea F.C., who was said to be closely connected to President Putin; and, second, that he was a non-executive director of a UK-listed company which had, prior to the war in Ukraine, operated in the extractive sector in Russia (as well as other countries). None of the British-born directors of the company were, however, sanctioned. The Government claimed that designation of Mr. Shvidler would contribute to the objective of the sanctions regime by: (1) amplifying the incentives on Mr. Abramovich (himself sanctioned) to put pressure on President Putin; and (2) disincentivising others from carrying out business in areas of strategic significance to the Russian economy.

The justifications were exceptionally tenuous and broad and failed to provide a justification for singling out Mr. Shvidler. The first reason would apply to potentially any friend or associate of Mr. Abramovich, including, for instance, officials and players at Chelsea F.C., if sanctioning such innocent people for their association with Mr. Abramovich might conceivably be thought to exert some pressure on him. The second reason would apply to every director of a company that had engaged in business in a sector of importance to the Russian economy. The implications for Mr. Shvidler and his family are catastrophic: it has become a criminal offence for him to deal with any of his money or assets anywhere in the world. He needs a licence to pay for his family's core needs.

It is in such situations that one can expect the proportionality test imposed by the Human Rights Act 1998 to come into its own as a method for determining whether such measures strike an unfair balance between general community objectives and individual rights – here, the right to private and family life and the freedom to enjoy one's possessions. The designation of Mr. Shvidler is, after all, a paradigm instance of an individual being used by the state as a means to an end, sacrificed as a political pawn without having brought such action upon himself in any way. However, in *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC

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30, [2025] 3 W.L.R. 346 ("*Shvidler*"), a majority of the Supreme Court interpreted proportionality out of existence in this context (and potentially many others).

The judgment of Lord Sales and Lady Rose, with which Lords Reed and Richards agreed, begins by comprehensively restating how the courts should approach proportionality under the Human Rights Act 1998. The Justices reiterated the well-known four-stage test, which requires: (1) a sufficiently important objective; (2) a rational connection between the measure and objective; (3) no less intrusive alternative that does not unacceptably compromise the objective; and (4) a fair balance between the rights of the individual and the interests of the community (at [118]). The Justices then affirmed that it is for the court to "make its own assessment" as to whether action is proportionate (at [121]) but will have regard to and "may afford a measure of respect" to the balance struck by the authority (at [122]). In the context of foreign policy, the executive is permitted a large margin of judgment (at [123]) and, more controversially, the Court held that this is the case even in respect of reasons different from those initially given for a decision by a minister, advanced by officials to shore-up a weak case in the course of legal proceedings (as had been done in Mr. Shvidler's case itself) (at [136]–[137]).

These principles primarily fall to be applied by first instance courts, but as Mr. Shvidler's appeal was "essentially a test case", Lord Sales and Lady Rose decided that the Court should decide for itself if the measure was proportionate (at [164]).

It is these sections of the judgment which set out the principles for courts applying proportionality – extending over 50 paragraphs – that may seem to be its main contribution. In fact, of much greater significance is how these principles were applied, as the detailed articulation of a structured method for assessing proportionality quickly dissolved into thin air.

It was not in dispute that the designation of Mr. Shvidler pursued a sufficiently important objective, satisfying the first stage of the four-stage proportionality test. The rational connection stage is also usually uncontested, as measures adopted by government will ordinarily be capable of making *some* contribution to the aim, such as to be rationally connected to it. Mr. Shvidler nonetheless contended that the contribution was so vanishingly small that there was no rational connection.

Lord Sales and Lady Rose found a rational connection established because the designation of Mr. Shvidler could rationally be said to amplify the incentives on Mr. Abramovich to take steps favourable to British foreign policy and because it rationally encouraged people to "stay away" from businesses in the Russian energy sector (at [199]–[200]). This "contributes to the cumulative effect" of sanctions (at [197]). The Court emphasised that where the objective of a measure is very important, even a very indirect contribution to the objective is likely to be rationally connected to

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it. The Justices at least seemed not to place reliance on other, unfair and unsupported, reasons advanced by the Government: that designation would send a "signal" to Mr. Shvidler of negative consequences for having "implicitly legitimised" Russia's actions and to incentivise him to oppose it. Mr. Shvidler had pointed to actions and words by which he had distanced himself from the Russian Government and criticised the war, and explained that going further could place him and his family in physical danger (at [199]).

At this point in the judgment, one might think the heart of the proportionality analysis was yet to come. It is the third and fourth stages that provide a method for balancing the interests of individuals against the wider interests of society, ensuring that measures go no further than necessary and that a "fair balance" between individual and collective interests has been struck. Instead, the supposed methodological rigour of the proportionality test as a means of protecting individual rights from overly sweeping exercises of executive power simply evaporated.

Lord Sales and Lady Rose concluded that it followed from the nature of the foreign policy objective that there was no less intrusive measure which would not have unacceptably compromised it. This was despite the fact that it had not been established that designating Mr. Shvidler made *any* actual or material contribution to the objective in the first place, such that it would have unacceptably compromised the objective for him not to have been sanctioned (at [203]). As Lord Leggatt put it in a powerful dissent, the justifications for the deprivation were "no more than armchair theories" (at [307]).

The Court then rejected the challenge under the fourth stage essentially for the same reason, holding that, "in light of the importance of the policy objective in issue and the connection between the designation of Mr. Shvidler and that objective, the issue of fair balance in relation to this designation is straightforward" (at [213]). And that was that.

Lord Sales and Lady Rose also rejected Mr. Shvidler's argument that the designation of many other persons would meet the rational connection test without any justification proffered as to why he had been singled-out. This suggested that designation of other associates of Mr. Abramovich or directors of companies with activities in the Russian energy sector *without more* was unnecessary and that designation within such categories was essentially arbitrary: Ministers could simply pick and choose people to designate without *reason* and without *need*. The Court rejected the argument, again, on the basis that all that was necessary to establish proportionality was that designation could rationally be thought to contribute something to the objective (at [221]).

Thus, for all that the majority judgment sets out, at length, a principled and structured approach to applying a proportionality test, when it falls to be applied, proportionality has no value in contexts where a measure can be

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rationally – even if highly tenuously – thought capable of advancing an important foreign policy objective, whatever the impacts on an individual. The test is not proportionality. It is the loosest conceivable rationality test.

Lord Leggatt's dissenting judgment contrasted with that of the majority by carefully assessing the cogency of the reasons given for sanctioning Mr. Shvidler and the weight to be afforded to them. He concluded that the "flimsy reasons" did "not begin" to justify the devastating impact on Mr. Shvidler and his family. Whilst some of his reasoning was unorthodox, he was surely right in stating that "if the courts are not prepared to protect fundamental individual freedoms even in a case like this, the right to a judicial review of the minister's decision to curtail such freedoms [. . .] is of little worth" (at [254]).

The wider implications are concerning. Many measures can be expressed as furthering weighty policy objectives, such as public health or tackling crime or poverty. The Supreme Court has also said that such contexts attract a very wide margin of appreciation (e.g. *R. (on the Application of Jwanczuk) v Secretary of State for Work and Pensions* [2025] UKSC 42, [2025] 3 W.L.R. 741, at [138]). After *Shvidler*, it is unclear what, if anything, is left of proportionality where the Government can plausibly claim a measure rationally advances such objectives.

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