
Right to demonstrate – right of association - proscription – terrorism legislation - proportionality

R (Ammori) v Secretary of State for the Home Department [2026] EWHC 292 (Admin), High Court

Introduction

The High Court has recently ruled that the Home Secretary had acted unlawfully in proscribing (banning) the action group Palestine Action under s.1 of the Terrorism Act 2000 (*Ammori v Secretary of State for the Home Department* [2026] EWHC 292 (Admin)). However, it also ruled that the effect of that proscription will remain in place until the end of February, when a further hearing is due to take place to discuss what happens next, including the possibility of a government appeal to the Court of Appeal.

The decision of the High Court was welcomed by Palestine Action and by those who support the right of free speech and the right to demonstrate, but the real importance of the decision is what it tells us about the difference between penalising unlawful protest action, and criminalising a particular group (and those who support that group) independently from any unlawful actions.

The facts and claims

The claimant, one of the co-founders of Palestine Action, challenges the decision of the Home Secretary to proscribe Palestine Action under s.3 of the Terrorism Act 2000. Under ss. 3(3) and (4) of the Act, if the Home Secretary believes an organisation is concerned in terrorism, she has a power to proscribe. The term “concerned in terrorism” is defined in s. 3(5) as follows:

For the purposes of subsection (4) an organisation is concerned in terrorism if it – (a) commits or participates in acts of terrorism, (b) prepares for terrorism, (c) promotes or encourages terrorism, or (d) is otherwise concerned in terrorism.

“Terrorism” is defined in s. 1 as the “use or threat of action” when the use or threat is “designed to influence the government ... or to intimidate the public or a section of the public” and “is made for the purpose of advancing a political, religious, racial or ideological cause”. By s.1(2), action must involve either “serious violence against a person” or “serious damage to property”.

Palestine Action was proscribed as a terror group by the UK government in July 2025 under s.1 of the Terrorism Act 2000 (under the Proscribed Organisations) (Amendment) Order 2025)). This was approved by both Houses of Parliament and came into force on 5 July 2025. The purpose of the group was to lend support to the Palestine cause in and against Israel. The government voted to proscribe the group weeks after the group’s activists broke into an RAF base and spray-painted two military aircraft, resulting in £7m of damage. The consequence of a proscription includes being a member of that group, and, of particular relevance to the action in judicial review, below, expressing support for a proscribed group (under s.13 of the 2000 Act). Thus, many protestors who help up placards supporting the group were arrested under the Terrorism Act, and many were detained in prison awaiting trial.

The claimant brought an action challenging the proscription: (i) that the Home Secretary acted unlawfully by failing to give Palestine Action the opportunity to make representations that it should not be proscribed before deciding to lay the Order before Parliament; (ii) that the Home Secretary failed to have regard to relevant considerations when deciding to seek an order proscribing Palestine Action; (iii) that the decision to seek the Order proscribing Palestine Action

was made by the Home Secretary in breach of her own policy on when she would exercise her discretion to seek an order proscribing an organisation; and (iv) that the decision to proscribe was contrary to the Human Rights Act 1998 because it amounted to an unjustified and disproportionate interference with the rights under Article 10 (freedom of expression) and Article 11 (freedom of association and peaceful assembly) of the European Convention on Human Rights (as given effect by the Human Rights Act 1998).

The decision of the High Court

The Divisional Court rejected ground (i), above – opportunity to give reasons – because of the likely practical difficulties that would arise with respect to any general obligation to give prior notice and invite representations. Thus, although executive powers provided under statute were to be exercised in a manner that was fair in all the circumstances, including all aspects of the nature and context of the decision, fairness did not require the secretary to give Palestine Action notice, to provide reasons, or to give it the opportunity to make representations. In this case, the national security context meant that a court should be cautious to supplement the statutory procedural requirements, and to require consultation with an organisation provisionally believed to be concerned in terrorism was not an obvious step. Any communication would necessarily be guarded and in some cases the secretary might conclude that no information could be disclosed. There would also be practical difficulties with a notice requirement: such an organisation might not be open about how to be contacted, and the secretary's knowledge of its leadership might rest on sensitive intelligence material.

It also rejected ground (ii) – failure to take into account relevant factors when seeking to proscribe the group. In the claimant's view, the Home Secretary had failed to take into account the following factors:

- the fact that Palestine Action sought to prevent conduct which it reasonably considered to constitute the aiding and abetting or facilitation of genocide and other serious violations of international law;
- the adequacy of alternative criminal and civil measures to address any criminal conduct for which Palestine Action was responsible;
- the fact that the proscription of Palestine Action would have a wider impact on freedom of expression including speech in favour of direct action against arms companies supplying military equipment to Israel;
- acts of low-level direct action and civil disobedience against arms companies by persons not associated with Palestine Action";
- and the fact that the decision to proscribe Palestine Action amounted to differential treatment viz other protest groups using direct action.

In the court's view, however, the secretary had obviously considered the aims of the group in challenging acts of genocide; and the remainder of the claims were relevant to other, more successful, claims, considered below.

However, the Divisional Court allowed the claim on grounds (iii) and (iv) above. In the court's view, the Home Secretary had a long-standing policy in respect of the exercise of the power to proscribe:

...the Home Secretary may proscribe an organisation if they believe it is concerned in terrorism, and it is proportionate to do...In considering whether to exercise this discretion the Home Secretary will take into account other factors including the nature and scale of the organisation's activities, and the specific threat that it poses to the UK.

When the Home Secretary reached an unchallenged conclusion that Palestine Action was an organisation concerned in terrorism, in deciding to proscribe Palestine Action she relied on the

fact that proscription would be advantageous because it would mean that the offences at ss. 11 to 13 of the 2000 Act could be used against any person supporting Palestine Action, the statutory consequences of proscription providing further powers to disrupt Palestine Action. The purpose of the policy was to limit the Home Secretary's power to proscribe, and the additional factor was not consistent with the purpose of that policy. In particular, any "other factor" had to explain the particular need to proscribe an organisation above and beyond the necessary belief that the organisation is concerned in terrorism.

The court stressed that the requirement of proportionality in the secretary's policy did not require her to make a decision that satisfied the test that a court would normally apply in accordance with established case law (*Bank Mellat v HM Treasury (No 2)* [2013] UKSC 38). However, taking into account the stated proportionality factors meant weighing them against the consequences of proscribing the organisation. This obliged the secretary to approach her discretion comprehensively: to appreciate the likely consequences of proscribing Palestine Action on its members/supporters and others; to understand the nature of Palestine Action by reference to the stated factors and/or other relevant considerations; and then to assess the need for proscription. Further, the "nature and scale of an organisation's activities" in the stated factors did not refer to the totality of an organisation's activities; but meant only such activities as amounted to terrorism within s.1. Thus, the proscription power was to proscribe organisations because they acted in ways that meant they were concerned in terrorism, not because of other activities falling short of terrorism.

Regarding the stated factors, the secretary of state had adopted an appropriate approach of treating the nature and scale of Palestine Action's activities, and the extent of the threat it posed in the UK, as pertinent factors. Thus, her assessment of those matters as weighing in favour of proscription had been reasonably open to her. Although only three of Palestine Action's many actions had been assessed to amount to acts of terrorism, the secretary had been entitled to attach significant weight to any act occurring in the UK that came within the s.1 definition. Thus, she had received evidence that further serious property damage amounting to acts of terrorism would occur in the UK and had been entitled to attach weight to the risk that Palestine Action's activities would deter development of the UK defence industry, thereby causing prejudice to the UK's strategic defence objectives. However, her approach to "other factors" had not been consistent with the policy. A theme in the documents leading to the decision had been that proscription would be advantageous because it would mean that the offences at s.11, s.12 and s.13 could be used against persons supporting Palestine Action. That, in the court's view, was not a relevant consideration: the purpose of the policy was to limit use of the discretionary power to proscribe, and any "other factor" considered when applying the policy had to explain the particular need to proscribe the organisation *above and beyond the belief that the organisation was concerned in terrorism* (authors italics).

With respect to the claim under the HRA, the court concluded that Palestine Action is an organisation that promotes its political cause through criminality and the encouragement of criminality. However, that does not provide the Home Secretary with the answer to the claimant's claim under the HRA. Palestine Action's ability to persist in its campaign of undertaking and encouraging damage to property, needs to be justified with respect to actions comprising peaceful protest consistent with Convention rights, under the Palestine Action banner.

The court considered that the proscription of Palestine Action did not mean that those wishing to support the Palestinian cause or protest against companies such as Elbit Systems UK Ltd could not do so. The court also attached little weight to the circumstances of people who have been explicit in their support of Palestine Action since its proscription and have consequently been arrested. Instead, the Court measured the interference with the Convention rights by reference to

the restrictions imposed by criminal offences consequent on proscription, and by the extent to which people would exercise self-restraint in conducting lawful activities.

Even discounting Palestine Action's non-peaceful activities, proscription resulted in a very significant interference with the right to freedom of speech and the right to freedom of assembly. Thus, since the Home Secretary's policy had not been properly applied, it followed that the interference with the right of freedom of speech and freedom of association did not meet the requirement under s.6 of the HRA that any interference with Convention rights by a public authority had to be prescribed by law.

Despite the court ruling against the Home Secretary on whether her decision was 'prescribed by law', the court then considered the proportionality of the measure. The court attached real weight to the fact that Palestine Action has undertaken activities amounting to terrorism as defined by s.1(1), and great weight to the opinion formed by the Home Secretary who has both political and practical responsibility to ensure public safety. However, the court considered that the proscription of Palestine Action was disproportionate. First, a very small number of Palestine Action's activities amounted to acts of terrorism within the definition of s. 1, and for these, and for Palestine Action's other criminal activities, the general criminal law remained available. Thus, the nature and scale of Palestine Action's activities falling within the definition of terrorism had not yet reached the level, scale and persistence to warrant proscription.

Notwithstanding the court's acceptance of those two claims - that the ban of Palestine Action under terrorism legislation is unlawful - it ruled that the ban remains in place until the court considers the next steps; in particular whether the government wishes to appeal the finding to the Court of Appeal. Thus, in the meantime, expressing support for Palestine Action or taking part in its activities will remain a serious criminal offence.

Commentary

The power to proscribe a particular organisation, and thus criminalise its activities, membership and the activities of others in support of the organisation, is a form of 'prior restraint.' Thus, instead of waiting for the group or its supporters to commit a breach of the regular law (trespass, criminal damage, obstruction of the highway, etc.), a proscription order will allow the automatic application of anti-terrorism law to that group, its members and those supporting it. This obviously has a 'chilling effect' on the right of association, peaceful assembly and freedom of expression, as those who are affected by the ban will desist from becoming members or lending support to its views. Although this form of restraint is not automatically in breach of human rights, exceptionally strong and convincing evidence should be present to justify it.

Further, if people are willing to disobey the proscription order, they will face severe penalties under the 2000 Act, often for an activity that would not be a breach of general public order laws. For example, thousands of people have been arrested, and some charged under the 2000 Act, for holding up signs declaring support for Palestine Action. Such actions are, generally, entirely peaceful, and are not likely to be in breach of even the lowest level of public order offences (s.5 of the Public Order Act 1986). Yet, if that group is proscribed, that activity appears to be a breach of the 2000 Act, and the police do not have to show that the activity has caused any further harm beyond supporting the group.

That begs the question whether the group's existence and previous activities warranted the measure of proscription? The question is important for the group and its members and supporters, for they will be committing a breach of the 2000 Act however they go about their activities in the future. Palestine Action had committed several acts of severe damage to property before their proscription, and under the 2000 Act the group appeared to come within the, very wide, definition of terrorism – acts of violence and damage to property intended to further an ideological change. Indeed, the court in the present case accepted that some of its activities came within the 2000

Act. However, in the court's view, those activities – which could have been dealt with under the general law - did not cross the threshold under the Act to warrant proscription.

On a strict interpretation of the Terrorism Act 2000, Palestine Action appeared to be a proscribed group, and its supporters clearly were supporting its cause. So how is a court allowed to decide that the act of proscription was unlawful? The traditional principles of judicial review allow the courts to question the legality and rationality of the Minister's decision. In this case, the Minister appeared to depart from her original reasons for prescribing groups, and, arguably, had failed to take into account relevant facts and policy. On the other hand, it is unlikely that without resorting to human rights law (the 1998 Human Rights Act) that a judge would find that the Home Secretary had 'taken leave of her political senses' in deciding to proscribe this group.

The courts' role in reviewing the minister's decision is now clearly focused on judging its compatibility with the rights in the European Convention on Human Rights, and its powers of review under the Human Rights Act 1998. Whether the wording of the 2000 Act was clear, the domestic courts are now allowed to ask the following questions: was the use of that statutory power proportionate and necessary in a democratic society to achieve the aims of the Act itself and the reasons the Minister gave in using the legislation? In addressing those questions the court is allowed, under s.2 of the 1998 Act, to take into account the jurisprudence of the European Court in this area, and to consider the fundamental importance of the right in question, together with the constitutional and democratic dangers involved in an act of proscription. Thus, it is relevant to ask whether any subsequent appeal to the European Court would be successful (perhaps causing an international conflict between the government and the Council of Europe)?

Article 11 of the European Convention on Human Rights provides for the right of association, and restrictions (including proscription) are allowed under Article 11(2) provided they are prescribed by law and necessary in a democratic society for the purpose of achieving (in this context) national security, public safety and the prevention of disorder and crime. The European Court would normally require that the group incites violence or infringes the rules of democracy (*Socialist Party v Turkey* (1998) 27 EHRR 51), or that the purpose of the group is inconsistent with the basic values of the Convention (Article 19 ECHR). The Court has also insisted that the term 'membership' is applied clearly and fairly, and does not include those who may have taken part in support of its ideas, perhaps at a demonstration (*Isikirik v Turkey* ((App. No 41226/09)). It is clear, therefore, that the Court would have real difficulties with accepting the legitimacy and proportionality of the measures applied against Palestine Action, but most importantly, its followers.

Equally important is the question whether the measure of proscription is damaging to our own constitutional values and feelings of justice? The domestic courts are supposedly the guardians of our fundamental rights, and in the past have ruled as unlawful detention without trial (even at a time of national emergency), and the acceptance of torture evidence in deportation proceedings; the government failing to provide convincing evidence for such measures. Domestic courts are no strangers to protecting human rights (or civil liberties as we once called them) and legal justice – witness their enforcement of the basic rules of natural justice and the duty to act fairly, and their insistence that everyone should have access to the courts and legal representation. Such judicial powers have been buttressed by the European Court's rulings, and the passing of the Human Rights Act 1998, but were part and parcel of the domestic judiciary's belief in freedom and justice.

Shortly after the ruling in *Ammori*, the Supreme Court provided guidance the trial courts on the interpretation and application of s.12 of the 2000 Act (*R v ABJ; R v DDN* ([2026] UKSC 8). The Court held that once the elements of the offence were proved, any interference with the defendant's Article 10 rights would then be proportionate, and that there was no need for a trial judge to conduct an assessment of proportionality. Section 12(1A) provides that a person commits an offence if they expressed an opinion or belief that was supportive of a proscribed organisation (in this case Hamas), and in doing so were reckless as to whether a person to whom

the expression was directed would be encouraged to support a proscribed organisation. This makes the ruling in *Aamori* more fundamental, as once a group is lawfully proscribed, it might be difficult for an offence of supporting that group to be challenged.

The Supreme Court noted that under s. 12(1) (A), an offence was not committed by a person holding an opinion or belief: that opinion had to be expressed. This, simply, confirms the absolute character of freedom of thought, conscience and religion under Article 9 ECHR, and places the focus on Article 10 (freedom of speech) and the right to manifest that (thought) under Article 9. The Court then stressed that under the provision the opinion or belief had to be objectively supportive of an organisation, which was a question of fact, depending on how the defendant's words (spoken or written) would naturally and reasonably have been understood in the circumstances. The Supreme Court made it clear that expressing an opinion or belief which coincided with the aims or beliefs of an organisation was insufficient. However, although an opinion or belief which was supportive of an organisation would often refer expressly to the organisation, there was no requirement for an express reference in every case, because a sufficiently clear reference might be made by implication. This had to be judged objectively and was a question of fact for the court (*R v Choudary* [2015] EWCA Crim 1436). At this point, therefore, it might be noted that those 'supporting' Palestine Action by holding up placards bearing its name would pass this test (although many protestors made it clear that they were not supporting the group but were against genocide). It is also unclear whether a placard stating that a group should not be proscribed under the Act would amount to supporting the group?

Further, in the Court's view, the offence was not one of strict liability, as the defendant had to know that they were expressing an opinion or belief which was supportive of the organisation. Also, the opinion or belief had to be expressed at a time when the organisation was proscribed, although there was no requirement of knowledge that the organisation was proscribed. In addition, under s.12(1A) (b), the person expressing the opinion or belief had to be reckless as to whether it would encourage a person to whom the expression was directed to support a proscribed organisation. That required, first, that the defendant had to be aware of a risk that the result would occur, and second, that in the circumstances known to the defendant, it had to be objectively unreasonable to take the risk.

The Supreme Court then found that the provision was compatible with Article 10 ECHR. The terms of s.12(1A) were clear enough to enable individuals to regulate their conduct, so as to be "prescribed by law" under Article 10(2). Further, the provision served several legitimate aims, such as protecting the citizens of the UK against terrorism, and enabling a democratic society to operate without fear. It also contained measures designed to prevent the UK from being used for the purpose of terrorism outside the UK and was specifically intended to address the danger of radicalisation.

Moving to the proportionality of the interference with freedom of expression under s.12(1A), and whether it was necessary in a democratic society, the Court stressed that it had to be recognised that a content-based restriction on freedom of expression, particularly in the context of political speech, required a compelling justification. However, in this case, it had been clearly established that there was a real risk of terrorist attacks in the UK and elsewhere, carried out by individuals who had been encouraged by the words of others. Deciding how to balance the value of freedom of expression against the need to combat terrorism was a highly sensitive matter and was primarily within the responsibility of the elected national authorities. Accordingly, the courts had to provide those authorities with a wide margin of appreciation; or, in domestic law, judicial deference. In this regard, the Supreme Court offered a wider margin to the Government than offered by the High Court in *Ammori*, and the government may be hopeful that the Court of Appeal will adopt a similar approach when it hears the appeal later this year.

As is required by s.2 of the Human Rights Act 1998, the Supreme Court referred to the jurisprudence of the European Court in this area. It noted that the Strasbourg had adopted a fact-sensitive approach, but taking into account: the context in which the words in question were spoken or written; whether the words could be understood as encouraging *violence* (author's italics); the size of the relevant audience; and whether the words amounted to an "apology for terrorism"; and the nature and severity of the penalties imposed (*Zana v Turkey* 1999 27 EHRR 66; and *Internationale Humanitare Hilfsorganisation eV v Germany* (Application no 11214/19, 10 October 2023)). Thus, in the Supreme Court's view, it was reasonable to conclude that, where all the elements of an offence under s.12(1A) were established, the interference with freedom of expression was, in principle, justifiable. Thus, there was no requirement that after the ingredients of the offence had been proved, a separate assessment had to be carried out of whether a conviction would be a proportionate interference with a defendant's right to freedom of expression. Both Government and Parliament had carried out that assessment when the legislation was brought forward and enacted.

Having made its ruling the cases of the defendants were then referred to the Crown Court for trial, where the judge would repeat the elements of that ruling to the juries, so that they understand the requirements of the offence, and the extent to which human rights can be pleaded in such proceedings. In those cases, under the ECHR case law, the jury will have to decide whether the words used by the defendants were an 'apology for terrorism' or legitimate democratic opinion. Following the Supreme court decision, however, those elements of proportionality might be irrelevant.

Conclusions

The decision in *Ammori* will, no doubt, reignite dissatisfaction from those who advocate the reform of the Human Rights Act and the withdrawal of the UK from the Council of Europe: the retreat from European human rights law. The government is appealing the decision, and permission was granted on 28 February, but it is to be hoped that the Court of Appeal, and the Supreme Court, will remind us of the dangers of reactionary and disproportionate measures to deal with a situation that needs to be resolved within the regular law and not via exceptional anti-terrorism law. The recent Supreme Court ruling in *ABJ*, above, tells us that once a group is proscribed, liability for supporting that group can be established reasonably simply, but not without proving some intention (recklessness) and clear connection with the causes of the proscribed group. That might be difficult to prove in many, but not all, of the 'supportive' actions connected with Palestine Action.

The decision to proscribe the group was perhaps genuinely introduced by the government, at that time, to be necessary in protecting national security and public safety. However, now that the courts have provided judicial guidance on the legality and reasonableness of such measures, it is questionable whether it is wise to press on with the measure, or seek an appeal to the Court of Appeal, or then to the Supreme Court. The High Court's approach is certainly sympathetic to a government's desire to regulate terrorist groups and their supporters. However, it is equally clear that a disproportionate application of that power, with little consideration to its impact on peaceful protest, and the possibility of using the regular criminal law to punish unlawful acts of protest, is likely to be challenged by the courts. In that sense, the Supreme Court's recent ruling on s.12 of the Act is certainly more deferential to government and Parliament, making the ruling of the High Court in *Ammori* even more critical to human rights and adherence to the rule of law.

In any case, Parliament might be wise to amend the existing legislation so that those groups whose *main aim* is not to commit acts of terrorism, but to engage in political protest (whether peaceful or not) are removed from the definition. That might make it easier and more logical to distinguish between other proscribed groups and Palestine Action. Groups such as Palestine Action, and its supporters, will then be subject to the traditional criminal and civil law when going beyond entirely peaceful protest; and those 'supporters' will be spared the extremes of terrorist legislation. Failure to address these issues may well lead to actions being brought before

the Strasbourg Court, with the possibility of legal and political conflict between the Convention and the domestic protection of Convention rights.

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