Neutral Citation Number: [2026] EWCA Civ 160

Case No: CA-2025-000603

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mr Justice Saini
[2025] EWHC 289 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 February 2026

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE BEAN
(Vice-President of the Court of Appeal (Civil Division))
and
LADY JUSTICE ELISABETH LAING

- -

Between:

DANA ASTRA IOOO **(a company registered in accordance with the laws of the Republic of Belarus)**	**Appellant**
- and -	
SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS	**Respondent**

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Maya Lester KC and Malcolm Birdling (instructed by **Fieldfisher LLP**) for the **Appellant**
Sir James Eadie KC, Jason Pobjoy KC and Rayan Fakhoury (instructed by the **Treasury Solicitor**) for the **Respondent**

Hearing date: 28 January 2026

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Approved Judgment

This judgment was handed down remotely at noon on 26 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lady Justice Elisabeth Laing:

Introduction

1. The Appellant ('DANA') is a company registered in Belarus. It challenged sanctions imposed on it by the Respondent ('the Secretary of State'). That challenge was not an application for judicial review. It had to be, and was, brought under section 38 of the Sanctions and Anti-Money Laundering Act 2018 ('the 2018 Act').

2. DANA challenged its 'designation' under the legislative regime on two grounds. Saini J ('the Judge') dismissed that challenge in a lucid and careful judgment ('the Judgment'). As the Judge recorded in paragraph 5 of the Judgment, DANA argued, first, that the designation was a disproportionate interference with its rights recognised by article 1 of Protocol 1 ('A1P1') to the European Convention on Human Rights ('the ECHR'). The second ground was that it was 'irrational on conventional public law grounds for the Secretary of State to maintain the designation'. As the Judge further explained (see paragraph 35, below) DANA argued that the Secretary of State's conclusion that it was an 'involved person' was irrational. DANA further argued that when the Secretary of State reviewed the designation, he could not, for all the reasons which were relied on in support of the ECHR challenge, rationally have concluded, on the material before him, that the matters which led him to conclude that DANA was an 'involved person' were 'sufficient… to justify maintaining [DANA's] designation' (see paragraph 66, below).

3. DANA appealed to this court with the permission of Dingemans LJ. There were three grounds of appeal. First, the Judge erred in holding that (a) the designation did not of itself 'bring' DANA 'within [the United Kingdom's] jurisdiction' and that (b) the interferences with DANA's goodwill were not within that jurisdiction because DANA did not have an existing business in the United Kingdom's territory. Second (if ground 1 succeeded) the Judge erred in four ways in holding that any interference was proportionate and lawful. Third, the Judge was wrong to hold that the domestic public law challenge failed for the same reasons as the challenge under the Human Rights Act 1998. That conclusion was said to be wrong 'for the same reasons as identified in respect of Ground 2'. On its face that pleading shows that, as in the Administrative Court, there is a significant, if not total, overlap between grounds 2 and 3. It also shows that this ground of appeal is not the same as the ground of challenge in the Administrative Court (see paragraph 2, above), as it does not refer to the Secretary of State's reasons for concluding that DANA was an 'involved person'.

4. DANA was represented, as it was below, by Ms Lester KC and Mr Birdling. The Secretary of State was represented by Sir James Eadie KC, Mr Pobjoy KC and Mr Fakhoury. Mr Pobjoy (as he then was), Mr Fakhoury and Mr Butler represented the Secretary of State at first instance. On the appeal, counsel on both sides divided the oral advocacy, to great effect. I thank them all for their oral and written arguments.

5. I would dismiss this appeal, for the reasons given in this judgment. The Judge was undoubtedly right, for the reasons which he gave, to conclude that DANA was not within the jurisdiction of the United Kingdom for the purposes of article 1 of the ECHR. It follows that he was also right to dismiss DANA's second ground of challenge. But even if his first conclusion was wrong, he was nevertheless right to hold that any interference was proportionate, also for the reasons which he gave. Finally, his approach

to DANA's third ground of challenge was also correct, for the reasons which he gave. The Judgment is clear, and, as I will explain, the Judge's conclusions were not only open to him, but right. I will therefore summarise the Judgment in some detail. That will enable me to consider the parties' arguments relatively shortly. Paragraph references in this judgment are to the Judgment unless I say otherwise.

The facts

6. I have taken the facts from the Judgment.

7. DANA is registered in, and operates in, Belarus. Its parent company is registered in Cyprus. DANA is one of the biggest developers in Belarus. It has been involved in the construction business since 2006. Its biggest project is the Minsk World project ('the Project'). DANA won that contract after a tendering process and the issue of a decree by President Lukashenko in 2014. The site occupies more than 3 million square metres. The value of Project is estimated at US$ 3.5 billion. The relevant plots of land are in central Minsk and are owned by the Government of Belarus. The Project would be described in the United Kingdom as a 'public-private partnership'. Part of its purpose is to be the first international financial centre in Belarus. It is 'of particular socio-economic importance to Belarus, given that hundreds of Belarusian contractors are involved in its construction, that almost all the construction equipment and materials are produced domestically and that the construction of the centre means guaranteed jobs for tens of thousands of workers across the country'. It could 'fairly be described …as a flagship development for the state'. It is a current project (paragraph 19).

8. On 28 June 2019, DANA signed a four-year sponsorship agreement with the Belarusian National Olympic Committee ('the BNOC'). DANA's case was that this was a contract which was negotiated commercially. DANA paid the BNOC US$2m under the agreement. The agreement was part of DANA's 'commercial promotion'. The International Olympic Committee ('the IOC') took measures against the BNOC for not protecting athletes from reprisals for certain protests. The Judge's summary (in paragraph 20) of the IOC's description of those protests was that they were 'against the rigged Belarus elections of 9 August 2020'. I note that the Judge had also recorded, in paragraph 2, that President Lukashenko had been elected for a seventh successive term earlier that year 'in an election regarded by the UK, the US and the EU as a sham'. DANA's evidence to the Judge was that DANA tried to end the agreement to distance itself from the actions of the BNOC, which, DANA considered, created a risk for DANA's reputation. DANA tried to do so as soon as possible after the IOC's findings and the consequent provisional measures against the BNOC (on 7 December 2020). DANA ended the agreement on 6 January 2021.

9. DANA has been subject to sanctions in Belarus since 1 July 2022. They were imposed by the regime of President Lukashenko, on the grounds that, as a foreign company, it was considered to have taken 'unfriendly actions' against the regime. It seems that this was because its owners are based in Cyprus. The Judge described those sanctions. He was persuaded that consequences of those sanctions for DANA had been 'severe'. In short, DANA faces real challenges in operating effectively in Belarus, it is unable to divest itself from the Project, and had been threatened with, and recently subject to, expropriation' (paragraph 21).

10. DANA was first designated by the Secretary of State on 31 December 2020. The effect of that designation was that any assets of DANA's in the United Kingdom were frozen. The Judge quoted the statement of reasons in the original Sanctions Designation Form ('SDF') in paragraph 22. DANA was alleged to belong to the Karic brothers, Dragomir and Bogoljub, who are closely associated with President Lukashenko and his family. DANA was the only non-state owned entity general sponsor of the BNOC. DANA 'publicly supported Lukashenko in the face of strikes and protests' (paragraph 22).

11. That designation was varied on 17 March 2022 after a triennial review. An updated SDF and an 'accompanying lengthy Sanctions Designation Form Evidence Pack' ('SDFE') were created in March 2022. DANA asked for its designation to be revoked on 16 February 2023. It submitted extensive materials in support, in 43 annexes. Officials reviewed each of those annexes, and the reasoning and evidence in the March 2022 SDF and SDEF, and other open-source material. That was described 'in some detail' in Mr Darling's witness statement. The Judge's view was that it seemed to have been 'a rigorous process'. It involved 'a review of many thousands of pages of material submitted by DANA, and conscientious consideration of the designation on a fresh basis'. There was no suggestion of procedural unfairness (paragraph 23).

12. The Judge described the ensuing Administrative Review Form and its contents in paragraph 24. The Statement of Reasons, SDF, and SDFE were amended by the addition of a second ground for designation, based on the fact that DANA carried on business in the construction sector in Belarus. That was a reference to the Project. Officials had a meeting on 16 August 2023. They discussed the administrative review. They agreed to recommend to the Secretary of State that the designation should be varied with an amended Statement of Reasons. The Secretary of State accepted the recommendation on 22 August 2023.

13. In paragraph 25 the Judge accurately quoted (see further, paragraph 70, below) the part of the Statement of Reasons which explained, in two sub-paragraphs, why DANA was 'an involved person'.

    1. '[it] has been involved in the repression of civil society or democratic opposition in Belarus, or other actions policies or activities which undermine democracy or the rule of law in Belarus, namely as a sponsor of the [BNOC]; and
    2. [it] is or has been involved in obtaining a benefit from or supporting the Government of Belarus through carrying on business in a sector of strategic significance to the Government of Belarus, namely the Belarusian construction sector'.

14. In paragraph 26 the Judge summarised, in two sub-paragraphs, further information from the Administrative Review Form and the updated SDF about those two grounds of designation. They were based on DANA's sponsorship of the BNOC and on the extent of DANA's business in Belarus as a developer and its role in the Project. President Lukashenko had commented publicly on the importance of the Project to Belarus's economic interests, and on the commitment of his government to its completion, by using 'additional reserves if necessary'.

15. The Judge summarised in six points, in paragraph 27, the Secretary of State's 'wider rationale' for the designation, which he drew from Mr Darling's witness statement. Those six points related to the incentives and disincentives which designation would create for DANA and for those in a similar situation who might otherwise engage in the types of activities which the statutory scheme aims to discourage. The Secretary of State considered, for example, that it was reasonable to infer that DANA's prominence in the construction sector and its involvement in the Project 'serve[d] to legitimise the carrying on of business in the Belarusian construction sector', a factor heightened, among other things, by the importance of that sector to the economy and Government of Belarus. DANA's business was 'conferred benefits through decrees by President Lukashenko, including gifts of plots of state land in Minsk; generous tax breaks; the use of state resources for infrastructure; and other preferential terms'. DANA's own forensic report emphasised the importance of 'maintaining close access to the president and his inner circle' to 'the entire life cycle of a construction project', and that 'connections to key decision-makers… are also vital for access to state financing and subsidies, and other privileges'. The designation would encourage others who benefit from or support the Government of Belarus by carrying on business in the construction sector to pull out of that and any other strategically significant sectors. The designation sends a signal to DANA and to others in its possession that conduct of the kind relied on in this case has negative consequences. That signal may have a deterrent effect. The constraints on activity in the United Kingdom might encourage DANA to change its behaviour. Finally, designation might encourage it and others in a similar situation to denounce the 'unacceptable behaviour' of the regime, including its 'complicity in the invasion of Ukraine'.

16. The Judge noted the significant reliance on DANA's past conduct and the desire to discourage further such actions by DANA and by others, and the prominence of 'signalling' in the Secretary of State's purpose (paragraph 28).

The legislative scheme

The relevant provisions of the 2018 Act

17. As the Judge noted in paragraph 11, the European Union ('the EU') imposed sanctions on DANA from 17 December 2020. Those measures had direct effect in the United Kingdom. In a decision dated 28 June 2023 the General Court (Fifth Chamber) dismissed DANA's challenge to some EU sanctions. DANA's role in the Project was 'the principal basis for the EU's action against DANA'. The 2018 Act is now the domestic legal mechanism for the imposition of sanctions.

18. Section 1(1) of the 2018 Act gives 'an appropriate Minister' (defined in section 1(9)) a power to make regulations, if he considers it is 'appropriate' to make them, for purposes which include those listed in section 1(2) (section 1(2)(c)). For convenience, I will refer to the 'appropriate Minister' as 'the Secretary of State'. Those purposes include furthering a foreign policy objective of the United Kingdom and promoting 'respect for democracy, the rule of law and good governance'.

19. Until its repeal on 14 March 2022, section 2 of the 2018 Act significantly fettered the Secretary of State's consideration of whether sanctions regulations were 'appropriate'. Section 2(2) applied when the Secretary of State made sanctions regulations which were for a 'discretionary purpose' (defined in section 2(1) as a purpose which was not in

compliance with a UN or other international obligation). Section 2(2) prevented the Secretary of State from deciding that sanctions regulations were 'appropriate' unless, in respect of each discretionary purpose stated in the regulations, the Secretary of State had considered whether there were 'good reasons to pursue that purpose' and had decided that there were, and had considered whether the imposition of sanctions was a 'reasonable course of action' and had decided that it was. Section 2(4) required the Secretary of State to lay before Parliament a report explaining, in detail, that process of decision-making.

20. Section 1(5) defines 'sanctions regulations' by reference to eight listed types of sanction. One such type is 'financial sanctions'. Section 3 makes further provision about financial sanctions by reference to listed purposes. Many of those purposes refer to 'designated persons'.

21. Sections 9-13 make provision for the designation of persons. Section 9(1) defines 'designated persons'. 'Person' includes '(in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons'. Section 10 makes general provisions about designation. Section 10(3) requires regulations which contain a designation power to provide that the Secretary of State must, when he makes, varies or revokes a designation, 'without delay take such steps as are reasonably practicable to inform the designated person…'

22. Section 11 applies to regulations under section 1 which authorise the Secretary of State to designate persons by name (section 11(1)). Regulations must provide for the Secretary of State to be able to choose a standard or urgent procedure (section 11(1A)). The regulations must provide that under the standard procedure the Secretary of State cannot designate a person by name unless Condition A is met (section 11(2)). Condition A is that the Secretary of State 'has reasonable grounds to suspect' that the person is an 'involved person' (section 11(2A)). Section 11(3) requires the relevant regulations to define 'an involved person' in accordance with the definition of that term in section 11(3). That definition includes 'a person who (a) is or has been involved in an activity specified in the regulations'. The Secretary of State may not specify an activity unless he 'considers that specifying the activity is appropriate having regard to the purposes of the regulations as stated under section 1(3)' (section 11(4)).

23. Regulations must also require, where the Secretary of State designates a person by name under the standard procedure, that the designated person is given a statement of reasons (section 11(7)). That means 'a brief statement of the matters that [the Secretary of State] knows, or has reasonable grounds to suspect, in relation to that person' which have led to the designation (section 11(8)).

24. Section 15(2)(b) provides that regulations may provide for 'a prohibition imposed by the regulations not to apply to anything done under the authority of a licence issued by the appropriate Minister specified in the regulations'.

25. Section 21 is headed 'Extra-territorial application'. Section 21(1) provides that prohibitions or requirements may be imposed by regulations 'in relation to conduct in

the United Kingdom or in the territorial sea by any person' and 'conduct elsewhere, but only if the conduct is by a United Kingdom person'. Section 21(2) defines 'United Kingdom person' as 'a United Kingdom national' or 'a body incorporated by or constituted under the law of any part of the United Kingdom'. Section 21(3) defines 'United Kingdom national'. Section 63(1) provides that the 2018 Act extends to England and Wales, Scotland and Northern Ireland, subject to limited extension by order in council under section 63(3).

26. Section 22 gives the Secretary of State power to vary or revoke designations made under regulations. Section 23(1) gives a person a right to ask the Secretary of State to vary or revoke a designation. When such a request is made, the Secretary of State must decide whether to vary or to revoke the designation or to take no action on it (section 23(3)).

27. Chapter 3 is headed 'Temporary powers in relation to EU sanctions lists'. Sections 34-36 make provision about the relationship between sanctions under the 2018 Act and EU sanctions. Section 34(1)(a) refers to provisions of retained EU sanctions law. Among other things, an appropriate Minister was given a temporary power to make a direction adding a person to an EU sanctions list.

28. Chapter 4 is headed 'Court reviews'. Section 38(2) gives 'the appropriate person' (defined in section 38(3)) a right to apply to the High Court for any of the decisions listed in section 38(1) to be set aside. In deciding whether to set a decision aside, the court 'must apply the principles applicable on an application for judicial review' (section 38(4)). If a court decides to set aside a decision, 'it may make such order, or give any such relief, as could in the absence of this section be made or given in proceedings for judicial review of the decision', subject to section 39(1)-(4).

The Republic of Belarus (Sanctions) (EU Exit) Regulations 2019

29. The Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 2019 SI No 600 ('the Regulations') came into force on 31 December 2020. I have found the Judge's analysis of the Regulations helpful.

30. Regulation 4 of the Regulations describes the purposes of the Regulations. They include 'to encourage the Government of Belarus to (a) respect democratic principles and institutions, the separation of powers and the rule of law in Belarus, (b) refrain from actions policies or activities which repress civil society in Belarus…(d) comply with international human rights law and to respect human rights'. It was agreed that those purposes satisfy one or more of the conditions in section 1(2) of the 2018 Act. The Judge recorded that '…the relevant Minister considered that those purposes were included in section 1(2)(f) of the 2018 Act…'. The Regulations were supported by a report made under section 2(4) of the 2018 Act. The Judge quoted from that Report in paragraph 14.

31. As the Judge also recorded, regulation 5 makes provision for the imposition of sanctions. Regulation 5 gives the Secretary of State power to designate persons (including companies; see section 9(5) of the 2018 Act: see paragraph 21, above) by

name for the purposes of imposing various measures on them (under regulations 11-15). The combined effect of regulations 5A(3) and (4) is that the Secretary of State may only designate a person by name if he has 'reasonable grounds to suspect that person is an involved person'.

32. The Judge noted in paragraph 15 that when the Secretary of State originally designated DANA (31 December 2020) the criteria for designation were in regulation 6. The Secretary of State had to have reasonable grounds to suspect that the person was an involved person, and had to consider that the designation of the person was appropriate, having regard to the purposes stated in regulation 4, and to the likely significant effects of the designation on that person (as they appeared to the Secretary of State to be on the basis of the information the Secretary of State had).

33. The Regulations were amended on 5 July 2022 to reflect changes made by the Economic Crime (Transparency and Enforcement) Act 2022. The only prescribed criterion is now the criterion in regulation 5A (see paragraph 31, above). The Judge quoted the relevant parts of the definition of 'involved person' in paragraph 16. An 'involved person' is a person who 'is or has been involved in' any of the following:

> '(iii) the repression of civil society or democratic opposition in Belarus [; or]
> (vii) obtaining a benefit from or supporting the Government of Belarus through carrying on a relevant business activity[.]'

34. Regulation 6(3) explains that a reference to 'being involved in an activity' listed in paragraphs (2)(a)(i) to (vi) includes being involved 'in whatever way and wherever any actions constituting the involvement take place'. Regulation 6(3A) explains that 'being involved in obtaining a benefit from or supporting the Government of Belarus' includes, in particular, 'carrying on business in a sector of strategic significance to the Government of Belarus'. The construction sector is such a sector (regulation 6(4)(b)). Finally, the Secretary of State must, in cases like this, give the designated person a statement of reasons. That term is defined in regulation 8(4) as 'a brief statement of the matters that the Secretary of State knows, or has reasonable grounds to suspect, in relation to the person, which have led the Secretary of State to make the designation'.

The Judgment

'Involved person'

35. The first issue which the Judge considered was whether DANA was an 'involved person'. He said that, until the oral hearing, neither he nor those representing the Secretary of State had realised that DANA's case was that the Secretary of State's conclusion that DANA was an 'involved person' was irrational and unlawful. The Judge did not consider that that issue had been raised by the pleadings. The Judge quoted from ground 2 as pleaded in the claim form. It was hard to read this as 'anything other than a complaint about the exercise of the discretion to maintain the designation of a person who it was accepted was an involved person'. It was not a complaint about the necessary prior finding that there were reasonable grounds to suspect that DANA was an involved person. That finding, the Secretary of State had submitted, was 'highly relevant to the public interest in DANA's designation' and any proportionality balance (paragraph 29).

36. At the hearing, Ms Lester had submitted that it was irrational on conventional public law principles for the Secretary of State to have decided that DANA was an involved person on the basis of its sponsorship of the BNOC. She had accepted that the Project 'just about' made DANA an 'involved person'. The Judge was satisfied, by reference to the relevant sequence of events, and for the detailed reasons which he gave, (in paragraphs 32-38) that 'It was plainly rational for the Secretary of State to conclude…that the Olympic Sponsorship made DANA an "involved person" on the "reasonable grounds to suspect" test', and so liable to the application of designation and sanctions' (paragraph 38).

37. The Judge's summary of his reasoning in support of that conclusion was 'DANA's sponsorship agreement remained in place during these repressive actions against athletes, and even after the IOC's announcement of its investigation into the Government of Belarus' repressive conduct in October 2022, its findings and imposition of provisional measures on 7 December 2020. The agreement was terminated in January 2021 but that does not undermine the fact that DANA gave public facing apparent support to the BNOC, through sponsorship of the state and the BNOC (which carried out or oversaw the abuses I have set out above). The apparent distancing by DANA of itself from the BNOC is not a matter which the Secretary of State was obliged to accept removed the support by sponsorship of that organisation at the time of these abuses' (paragraph 37).

Article 1 of the ECHR and A1P1

38. The second issue which the Judge considered was the ECHR arguments. He did so in two stages. First, he summarised the arguments. He then analysed the arguments and reached a conclusion.

39. The Judge said that the principles were well established. Article 1 of the ECHR provides that the high contracting parties 'shall secure, to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention' (emphasis by the Judge). An exercise of jurisdiction was a sine qua non for engaging the responsibility of a contracting state for a potential infringement of the ECHR. The question of jurisdictional liability for the acts or omissions on which a complaint is based is a separate issue, and belongs to the 'merits phase' of a case. The Judge referred to paragraph 97 of *MN v Belgium* (GC) App No 3599/18, 5 May 2020 ('*MN*') in that context. The arguments had not always distinguished, in his view, between the issue of jurisdiction and the claimed infringement.

40. There were several decisions of the Grand Chamber which gave 'authoritative guidance' about the phrase 'within their jurisdiction'. The Judge summarised their effect in five propositions in paragraph 48. Those propositions were not challenged by the parties.

    1. A state's jurisdictional competence is 'primarily territorial' *MN* at paragraph 98. In other words, it is generally limited to the territory of the state in question.
    2. Acts done, or producing effects, outside a state's territory can only be an exercise of jurisdiction within the meaning of article 1 in 'exceptional circumstances': *MN* at paragraphs 101-102. A

decision that there are such circumstances requires 'special justification' (*Bancović v United Kingdom* (GC) App No 52207/99 ('*Bancović*') and *Al-Skeini v United Kingdom* (GC) App No 55721/07, 7 July 2011, paragraph 132) ('*Al-Skeini'*).

3. Whether there is such an exceptional exercise of jurisdiction must be considered on the facts of the case. The European Court of Human Rights ('the ECtHR') has carefully developed, but also limited, categories of exceptional jurisdiction. 'The key feature linking those categories has been that the Contracting State itself has by its own positive action asserted control over persons or a whole area outside its territory'. The Judge referred to paragraphs 57, 59, 61 and 63 of *Bancović*, and to paragraphs 130-131 of *Al-Skeini*. He added that the ECtHR had explained in paragraph 113 of *MN* that the focus is 'the nature of the link between the applicants and the respondent State and to ascertain whether the latter effectively exercised authority or control over them' (emphasis by the Judge).
4. The Judge gave three examples from decisions of the ECtHR in paragraph 48(iv). They were 'Effective control over an area' by a state (by its own armed forces, or through a subordinate local administration) (*MN*, paragraph 103); the exercise of 'public powers, such as authority and responsibility in respect of the maintenance of security' (*MN*, paragraph 104); and what the Judge described as a 'number of situations characterised by control over the person' in which an agent of the state exercises authority and control by the use of force, or where state agents abroad take a person into their custody.
5. A final 'special category' is cases in which a state's jurisdiction may arise from acts or omissions of diplomatic or consular officials 'when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property' (paragraph 106 of *MN*).

41. In paragraph 49, he referred to the recent decision of the Grand Chamber in *Agostinho v Portugal* App No 39371/20, (April 2024) ('*Agostinho*'). The Grand Chamber had 'declined to expand the grounds on which a state could be held to have extra-territorial jurisdiction over a person'. It had said, in paragraph 199, '…jurisdiction cannot be established merely on the basis of the argument that the State is capable of taking a decision or action impacting the applicant's situation abroad'. The Grand Chamber had 'expressly rejected a test of extra-territoriality based on whether a state had control over an applicant's Convention interests, because Article 1 ECHR "requires control over the person himself or herself rather than the person's interests as such": [205]'. This approach was consistent with the ECtHR's decisions in immigration cases. An administrative decision taken by a state within its territory about, or which will affect, a person who is abroad, 'is not sufficient to bring those persons within the State's territorial jurisdiction for the purposes of Article 1 ECHR'. He referred to *MN*, in which the respondent made a decision (within its jurisdiction) to refuse an application, made from abroad, for visas in order to enter Belgium and make an asylum claim. The decision was not an exercise of jurisdiction, even though it 'had a significant impact on their personal situation (involving Article 2 and 3 ECHR)'.

DANA's two arguments

42. The Judge noted that DANA had not argued that any of the exceptional categories of jurisdiction applied. DANA had two arguments.

    1. It relied on what the Judge called 'the Swiss cases'. Those were *Nada v Switzerland* Ap No 10594/08, 13 September 2012 ('*Nada*') and *Al Dulimi v Switzerland* (App No 5809/08, 21 June 2016) ('*Al Dulimi*'). DANA had argued (in effect) that they support a new exception. That is, if a contracting party implements sanctions against a designated person, that is an exercise of jurisdiction for article 1 purposes, even if the person is physically outside the state's territory and has no assets in it.
    2. A1P1 protects DANA's 'goodwill' in the United Kingdom as well as its goodwill abroad. DANA's designation is an exercise of territorial jurisdiction within the scope of article 1 on conventional principles. It stops DANA from doing business in the United Kingdom now or in the future, including paying its lawyers.

The Swiss cases

43. The Judge considered *Nada* in paragraph 52. I will say more about *Nada* in paragraphs 79-82 and 87, below. As the Judge pointed out, the Swiss authorities did not base their argument in that case on the contention that the decision to subject the applicant to a travel ban 'amounted to an exercise of territorial jurisdiction over the applicant' (who was not in Switzerland). The Judge referred to Mr Pobjoy's 'well-structured submissions', and accepted his argument that *Nada* is authority for a proposition about the attribution of responsibility (for the purposes of article 1 of the ECHR) for measures taken to implement UN sanctions, and not for any wider proposition about the extra-territorial exercise of jurisdiction. It would be surprising if it were, as that point was not taken by the Swiss authorities.

44. In *Al Dulimi* the Swiss authorities confiscated assets of the applicant which were in Switzerland, again pursuant to a resolution of the UN Security Council. The applicant complained of a breach of article 6 because he had had no procedural safeguards. Switzerland tried to distinguish *Nada* on the question of attribution. The ECtHR rejected that argument and relied on *Nada* on that point. The Judge said, rightly, '*Al Dulimi* accordingly takes matters no further'. He added, again, obviously rightly, that *Al Dulimi* could be distinguished from the present case because it 'concerned the seizure of property within the territory of the defendant state' (Judge's emphasis). This case was different because it was common ground that DANA had no assets in the United Kingdom.

45. The Judge said that the complaint was that the Secretary of State had taken a decision which was 'capable of affecting [DANA's] interests abroad, perhaps only in a reputational sense'. Jurisdiction for the purposes of article 1 could not be established on the basis that a state takes a decision which is 'capable of affecting a person situated abroad or because the decision affected one or more of that person's interests abroad'. Recent decisions of the Grand Chamber (*MN* and *Agostinho*) 'preclude this reasoning as a basis of jurisdiction. To decide to the contrary would amount to an unprincipled mass extension of the scope of the ECHR'. When the ECtHR was not willing to extend

jurisdiction to benefit people who were at risk of suffering 'serious violations' of articles 2 and 3, 'there is nothing special or unique about sanctions to justify creation of a new exception' (paragraph 54).

Goodwill

46. The Judge considered this argument in paragraphs 56-66. He recorded DANA's concession that it did not have any property or assets in the United Kingdom. It nevertheless submitted that A1P1 protected 'claimed possessions' including its 'goodwill'. He explained that this was a late feature of DANA's claim, and how it had developed over time in paragraphs 58-61. It had not featured in the claim form or grounds but had made a 'late appearance'. The Secretary of State had argued that the only effect of the designation was the difficulty DANA's lawyers faced in getting a licence from OFSI for the payment of their fees. There was little to weigh against the foreign policy interests pursued by the sanctions; only the potential effects of an asset freeze if DANA ever had assets in the United Kingdom, and that difficulty with fees (paragraph 58).

47. 'No doubt to confront the challenges' posed by the case law about article 1, DANA had pleaded a 'creative case' in its skeleton argument (for the first time). Its designation and the proposed asset freeze deprived DANA 'of the ability to conduct business in the United Kingdom now and in the future' including paying its legal representatives and deprived DANA of 'the goodwill of [its] business both in the UK and abroad' (paragraph 59). It seemed to the Judge that Mr Birdling had 'reformulated' his case, in what, he accepted, were 'slightly different terms'. The complaint was that there was 'a bundle of "adverse consequences" for DANA's business including damage to its reputation …caused by the designation'. The Judge still did not understand the argument. The Judge asked for, and was given, a short note about this, which he quoted in full in paragraph 61.

48. That note said that the relevant interest was the goodwill in DANA's business. That was 'the benefit and advantage of the good name, reputation and connection of a business. It is the attractive force which brings in custom'. The goodwill of a business emanates from a source. The goodwill of a business has different elements but is a whole. DANA referred to *Breyer v Department of Energy and Climate Change* [2015] EWCA Civ 408; [2015] 1 WLR 4559 paragraphs 43-45 ('*Breyer*'). Goodwill in this sense is a possession for the purposes of A1P1.

49. The Judge observed that this was no more than an assertion that DANA had 'goodwill'. He rejected his argument 'in its various iterations'. He explained in paragraph 62, referring to two decisions of the ECtHR and to *Breyer*, in which those decisions were considered, that A1P1 'only applies to a person's existing possessions', so that 'future income cannot be considered to constitute "possessions" unless it has been earned or is definitely payable' (*Anheuser-Busch Inc v Portugal* App 73049/01, 11 January 2007 at paragraph 64). Goodwill is limited to the 'marketable and presently capitalisable product of a business's past work and reputation, as opposed to mere expectations of future profits'. DANA 'has no such goodwill in the jurisdiction'. The most DANA could say was that designation interfered with its ability to start a business in the future which might earn an income. Mr Birdling had accepted that that was not protected by A1P1.

The fact that the designation might have some impact on DANA's goodwill in Belarus was 'not enough to establish extra-territorial jurisdiction' because article 1 of the ECHR required 'control over the person himself or herself rather than the person's interests as such' (paragraph 205 of *Agostinho*).

50. The Judge gave further reasons for rejecting this argument in paragraphs 63 and 64. Mr Birdling's analogy with an individual's right to his reputation, protected by article 8, was telling, because, as a corporate entity, DANA had no such right. Neither the ECHR nor the common law recognised a reputation floating free of any local business or other such property interest which the law did protect. This argument was based on assertion, not evidence. It had 'plainly been constructed' to get around the difficulties presented by the 'established case law on the jurisdictional scope of the ECHR' (paragraph 64).

51. The only way DANA could establish jurisdiction was its contention that 'all sanction designation decisions' were an exercise of jurisdiction for the purposes of article 1 of the ECHR, whether or not there are any possessions within the jurisdiction (Judge's emphasis). That submission was unprincipled and inconsistent 'with high authority'. The argument failed at the threshold (paragraph 65).

52. In paragraph 66 the Judge added that he had not overlooked the argument that A1P1 was breached because it was difficult for DANA's legal advisers to get a licence for the payment of their fees. He had reservations about whether the requirement to apply for a licence 'could amount to an interference in the UK with a "possession"', as he would go on to explain. A restriction on sending money from outside the United Kingdom into the United Kingdom did not seem to him to be an interference with, or control of the use of, a possession within the jurisdiction for the purposes of article 1. He would nevertheless consider the proportionality of all the interferences on which DANA relied.

Common law rights

53. In paragraph 67 the Judge referred to DANA's written reliance on 'cognate common law rights to do business', noting that it had not been developed orally. To the extent that it had not identified any cause of action in private law, DANA could only rely on 'an orthodox rationality challenge'. The common law did not entitle DANA to a proportionality review. There is no common law right to do business in the United Kingdom. The common law protects freedoms in this context by requiring legal authority for acts which adversely affect a business, and by permitting a challenge to any such action on rationality grounds or on procedural grounds (paragraph 67).

Proportionality

54. The Judge had been invited to apply the test in *Bank Mellat v HM Treasury* [2013] UKSC 39; [2014] AC 700 ('*Bank Mellat*'). That was 'a rather artificial exercise' as there was no 'legally cognizable ECHR right' to put in the balance against the public interest under the fourth part of that test (paragraph 68). He took DANA's case at its highest. That was the revised case about goodwill which he had described in paragraph 61 (see paragraph 48, above) and the need to get a licence to pay lawyers' fees. What had to be justified was 'the impact of the UK designation on [DANA's] "bundle of rights" in this sense' (paragraph 69).

55. The Judge referred to and followed the judgment of this court in two linked appeals (*Dalston Projects Limited v Secretary of State for Transport* and *Shvidler v Secretary of State for Foreign, Commonwealth and Development Affairs* [2024] EWCA Civ 172 (together, '*Shvidler*')). *Shvidler* was the subject of an unsuccessful appeal to the Supreme Court. There was no issue in those appeals about territorial jurisdiction. The judgment of the Supreme Court was handed down after the Judge's decision in this case ([2025] UKSC 30; [2025] 3 WLR 346). The Supreme Court did not, in all respects, agree with the analysis of this court, but those differences do not, in my judgment, cast any doubt on the Judge's approach in this case; if for no other reason than that DANA's is, in every relevant respect, a much weaker case than that of the either of the two appellants in *Shivdler*.

56. The Judge accepted three points made by the Secretary of State (paragraphs 71-73).

1. DANA had not challenged the decision that there were reasonable grounds to suspect that it was 'an involved person' (per regulation 6 of the Regulations), at least in relation to the Project. That was relevant to an assessment of the public interest in designation and to the balance to be struck.
2. Nor had DANA challenged the Regulations. In the Judge's view, that meant that DANA must be taken to have accepted that it was an 'involved person' and that the designation criteria in the Regulations were lawful and proportionate. It followed that the starting point for an assessment of proportionality was that DANA was in a class of persons in whose designation, Parliament had lawfully decided, there might be a legitimate public interest, in order to encourage the Government of Belarus to respect democratic principles and human rights. This was not the end of the inquiry, but should be given appropriate weight in the Judge's assessment of proportionality.
3. While he had to assess proportionality for himself (a point which the Judge made repeatedly in the Judgment), he had to take into account that the Secretary of State's assessment of proportionality to some extent rested on matters of executive judgment about foreign policy. The court had to give the Secretary of State 'an especially broad margin of discretion' policy (*R (Al Rawi) v Secretary of State for Foreign and Commonwealth Affairs* [2006] EWCA Civ 1279; [2008] QB 289 at paragraph 148). The decision was based on an assessment or prediction and the rationality of that assessment can be judged but its correctness cannot in the nature of things be tested empirically (paragraph 32 of *R (Lord Carlile) v Secretary of State for the Home Department* [2014] UKSC 60; [2015] AC 945 at paragraph 32). That approach includes 'signalling'.

57. DANA's primary case was that there was no rational connection between the designation and the aims which it pursued (limb 2 of *Bank Mellat* test). The Judge observed that this was not a requirement for a 'perfect fit' between designation and the aim. If, as in this case, there were several aims, the Secretary of State did not have to show that each singly would have been enough. The relevant evidence was the evidence

at the date of the hearing (paragraph 74). The Secretary of State could rely on the cumulative effect of a designation regime and did not have to show that each designation was effective to achieve the aim. That sanctions were open-ended and could have a very severe impact did not make them disproportionate (paragraph 76).

58. The Judge directed himself correctly about the four-stage test in *Bank Mellat* in paragraph 77.

1. Was the aim of the measure important enough to justify an interference with a protected right?
2. Was the measure rationally connected with that aim?
3. Could a less intrusive measure have been used?
4. Did the effect of the measure on DANA's protected rights outweigh the importance of the aim (to the extent that the measure contributed to achieving that aim)?

59. DANA accepted that the designation pursued a legitimate aim (paragraph 78), in other words, that the first part of the *Bank Mellat* test was met. In paragraph 79, the Judge said that the evidence about the second part of the test was in Mr Darling's witness statement. DANA had subjected each facet of that evidence to 'sustained and powerful attack'.

60. The attack included the contentions that DANA had not benefited from or supported the Government of Belarus. The Judge rejected that submission on the ground that DANA had not challenged the decision that it was an 'involved person' on that basis because it was involved in the Project (see paragraph 36, above) and it was therefore not open to DANA to challenge 'the Secretary of State's rational connection analysis on the basis that it has not in fact obtained such a benefit' (paragraph 80). He took a similar approach in paragraph 81 to DANA's attack on the conclusion, based on its sponsorship of the BNOC, that DANA had enabled or facilitated the repression of civil society. In paragraph 82 he considered an argument that the Government of Belarus considered that DANA was hostile to it, so that there was no rational connection between its designation and the legitimate aim pursued by the Regulations. The Judge rejected those attacks on the general ground that DANA was challenging 'classic predictive and evaluative judgments as to the foreign policy "levers" by which our government can influence the behaviour of the Government of Belarus'. He also explained that DANA was not considered hostile or unfriendly, but had been subjected to sanctions by the Government of Belarus because its shareholders were based in Cyprus, which, the Government of Belarus thought, was an unfriendly state. In the Judge's view, DANA had not been singled out, and the aim was to prevent the flight of capital from Belarus. He gave two further independent reasons for rejecting that challenge. He then carefully considered and rejected, on two grounds, an argument that the Secretary of State's reliance on 'signalling' could not show a rational connection between the measure and its aim (paragraph 83).

61. The Judge dealt shortly with the third part of the *Bank Mellat* test. He was satisfied that the Secretary of State had considered 'less intrusive measures' and was entitled to decide that they would not have worked (paragraph 85).

62. The Judge considered the fourth part of the *Bank Mellat* test in paragraphs 86-88. DANA had no assets in the United Kingdom. Apart from the 'potential effects of the designation on the bundle of claimed rights' which the Judge had considered earlier in the judgment (paragraphs 46-52 and 54, above), the only effect of its designation was 'the inconvenience that its legal advisers face in obtaining a licence for payment'. Neither of those 'outweighs the public interest in achieving the objectives of the Regulations'. He doubted, in any event, whether the fee regime was relevant, for the reasons given by Singh LJ in paragraph 212 of the *Shvidler* case. That could be challenged in separate proceedings against HM Treasury and would not be a reason for challenging the lawfulness of a designation (paragraph 86). DANA's liability to restrictive measures in Belarus was not relevant, as it was not suggested that that liability was in any way affected by its designation in the United Kingdom (paragraph 87).

63. The Judge repeated that he had made his own decision on proportionality (paragraph 88). He made clear that he had not based his decision on proportionality on a 'public law rationality review'. This is a clear indication, first, that the Judge understood the difference between deciding the question of proportionality himself and a public law review on rationality grounds, and second, that the former was a more intrusive scrutiny than the latter. See further, paragraph 67, below.

64. In paragraphs 89-90, the Judge considered and dismissed three further arguments which were related to proportionality: differential treatment, arbitrariness and retrospectivity. It was significant that DANA had not invoked article 14. One of the points was that the Secretary of State had not published a policy to guide the exercise of the relevant powers. That went nowhere, as there was no public law duty to have a policy. Whether a decision was arbitrary or not depended on its merits, and not on the absence of a policy. DANA also relied on the fact that it was in a 'significantly worse position in Belarus than a number of other foreign-owned companies' which operated there but had not been designated in the United Kingdom, nor subjected to sanctions in Belarus. There was no evidence of differential treatment. Each case was considered individually. There was nothing arbitrary in the reasons for DANA's designation, which were set out in the evidence. Unlike, say, *Bank Mellat*, this was not a case in which there were relevant comparators. The extent to which it was appropriate to designate companies to achieve the relevant aims was 'a matter of executive judgment par excellence'. The Judge was 'in no position' to make such a comparative assessment for himself. DANA had not attempted to 'draw out the role and involvement' of the two companies to which DANA had referred 'to show that they were direct comparators' (paragraph 92).

65. The aim of designation was not a 'punishment' within article 7 of the ECHR. Its purpose was to change the behaviour of particular regimes. Retrospectivity was, in any event, '*hard wired* into the regime by primary and secondary legislation' (Judge's emphasis). The legislation had not been challenged. The legislation relied on past conduct because that was sound evidence for deciding who should be designated. 'The fact that a person may be designated for specified activities which were not previously targeted by the sanctions regime is a necessary corollary of the statutory scheme'. The retrospectivity of which DANA complained was 'inherent' in the legislation. Once that was accepted, this complaint had 'no merit' (paragraph 93).

Ground 2: rationality

66. The Judge referred to paragraph 58 of DANA's statement of facts and grounds. DANA's pleaded case was that, on the basis of the material before him at the date of the review decision, the Secretary of State could not 'rationally' have decided that the grounds which had led the Secretary of State to conclude that DANA was a 'involved person' were enough to justify its designation. DANA had modified that position at the hearing 'to make clear that as regards the Olympic Matter it was not accepted that [DANA] was an "involved person"'. That left 'a rationality challenge to the exercise of the discretion to maintain designation (on the basis of either or both of the Olympic Matter and Minsk World Matter). DANA relied on the same points in support of this remaining ground as those made in relation to Ground 1'. The Secretary of State had argued that 'the separate rationality challenge adds nothing to the complaint about a lack of rational connection between the aims of the 2019 Regulations and DANA's designation as a means of pursuing those aims' (paragraph 94).

67. In paragraph 95 the Judge said that ground 2 was 'parasitic' on 'the rational connection aspect of the proportionality analysis'. It was 'without merit (*a fortiori* given the lower standards of review)'. He added that an irrational decision was a decision which was not 'logically explained by reasons. Rational reasons were given for the designation. It is hard to see how a decision which the court has itself found to be proportionate (applying a more exacting test) could be irrational under conventional public law principles'. He dismissed ground 2 (paragraph 95).

DANA's submissions

68. Ground 2 before the Judge (ground 3 of the grounds of appeal) was the focus of Ms Lester's energetic oral submissions in this court. Ground 2 was rightly described by the Judge as parasitic on ground 1. The emphasis on ground 2 and the force of that emphasis therefore surprised me. The case before the Judge had been turned inside out on this appeal, or, to use another metaphor, Ms Lester was studiously attacking the dog's tail, rather than the dog itself. She suggested that the real challenge mounted by ground 2 was to the exercise of the discretion to designate. The Secretary of State should not have exercised that discretion, mainly because DANA was being badly treated by the Government of Belarus, and had tried to 'distance itself' from the BNOC as soon as it could. The exercise of that discretion was subject to important public law safeguards.

69. Ms Lester did not question the Secretary of State's view that DANA was an 'involved person'. But there were many such entities and not all of them are designated. Before exercising the relevant discretion, the Secretary of State must look at all the relevant factors and make reasonable inquiries. In paragraphs 72 and 82 the Judge had elided the question whether DANA was an involved person (a threshold question) with the exercise of the discretion which was available once the threshold was crossed. Paragraphs 80 and 81 showed that the Judge had not looked at the facts because the 'involved person' box was ticked. It could not be assumed that because DANA sponsored the BNOC that it enabled or supported the repression of civil society in Belarus. 'Of course the facts are in play'. It was 'simply irrational' to exercise the discretion on the facts. The Judge 'skipped over' the question. 'Nowhere in the judgment' did the Judge consider DANA's 'key argument' that the exercise of the discretion was irrational on conventional public law principle. She agreed, in answer to a question, that her argument was that the Government of Belarus was being 'horrible'

to DANA and it was not rational to exercise the discretion because DANA 'was having an awful time'. It was not rational to say DANA was benefitting from a project from which it was trying to escape. The designation was disproportionate and *Wednesbury* unreasonable.

70. Ms Lester suggested that the Judge had been wrong, in paragraph 25 (see paragraph 13.2, above), to say that a reason for the decision was that DANA 'is or has been involved in obtaining a benefit from' the Government of Belarus. I am satisfied, for the reasons given by Mr Pobjoy during the hearing, that the Judge's quotation from the statement of reasons was correct. She nevertheless 'disputed in the strongest possible terms' that (despite being an involved person) DANA was benefitting from the Government of Belarus. Carrying on business in a sector of strategic significance was not enough. The Judge had made a similar mistake about the BNOC. DANA was still entitled to argue that it had taken 'all the steps it could to terminate the agreement as soon as the IOC found out that the BNOC had supported the crackdown. Other companies had not done so. The majority of DANA's employees had supported the protests'.

71. She criticised the statement of reasons because it did not give a full account of all the points which DANA had made in its representations. One example was that it did not say that DANA had tried to end the sponsorship agreement as soon as it could. There was no rational basis for imposing sanctions.

72. Her submissions about proportionality were shorter. She had already made the points in relation to the exercise of the discretion. The fact that DANA had stopped sponsoring the BNOC was central, as was the fact that DANA was operating in Belarus with 'a gun to its head'. This court should analyse proportionality for itself. The Judge had found that DANA could not operate effectively in Belarus but had not taken that into account in his analysis. Whether or not DANA had been singled out was not the issue (paragraph 82 of the judgment, see paragraph 60, above); although 'the documents were clear' that DANA had been singled out. The signalling argument did not work because there was a clear finding of fact that DANA could not change its behaviour, or do more than it had done. She maintained, but did not develop orally, her written arguments about arbitrariness, less intrusive measures and the fair balance.

73. Mr Birdling made submissions about jurisdiction. The question was whether by designating DANA, the Secretary of State had 'brought [it] within the jurisdiction of the UK for Convention purposes'. 'Jurisdiction' is primarily, but not exclusively, territorial. DANA's alternative argument was that designation 'brings [DANA] within the jurisdiction because' this 'has impacts within the UK'. The intention was to affect DANA.

74. He referred to *MN*. That case tells what is not enough, but not what is enough. The 'critical difference' was that 'the reason why MN was not brought within the jurisdiction …is that the applicants were attempting to create the jurisdictional link'. He immediately referred to *Nada* but just as swiftly acknowledged that his submission was not that *Nada* established clear and constant ECtHR authority that targeted sanctions bring a person within the jurisdiction. The decision of the Grand Chamber in

Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland (App No 45036/98) (2006) 42 EHRR 1 ('*Bosphorus*') is the reason the ECtHR has decided so few cases about sanctions. I say more about that decision in paragraphs 76-78, below. His submission about *Nada*, if I have understood it, appeared to be that the jurisdiction point was not taken, and so, by some means or another, it is to be taken as read that there were no jurisdiction issues in that case. If this court were to hold, Mr Birdling continued, that there was jurisdiction for the purposes of article 1 of the ECHR, it would be going no further than the ECtHR had already done. That was consistent with the approach in *MN*, which was that each assessment depended on the facts. He added, in relation to sanctions cases, that 'In no case, including *Nada*, has Strasbourg determined that there is no jurisdiction'. He was driven to accept that there is no 'clear and constant jurisprudence' to support his argument on jurisdiction. He also hinted that there might be a procedural basis for jurisdiction.

75. The designation did, in any event, affect DANA's goodwill in the United Kingdom. The Judge had been wrong to think that DANA relied on reputational damage. Mr Birdling accepted that a company's reputation was not a 'possession' for the purposes of A1P1. The relevant possession was a 'bundle of business interests'; that is, a 'marketable bundle of business interests' which could be sold.

Bosphorus

76. I said I would return to *Bosphorus*. Mr Birdling mentioned, en passant, that the Swiss cases are the only cases in which the ECtHR has considered the compatibility of sanctions with the ECHR. He explained that the reason for this apparent gap is the decision of the Grand Chamber in *Bosphorus*.

77. In that case the Grand Chamber considered an application based on the seizure by the Irish authorities of a leased aircraft under EC Regulation 990/03 ('the Regulation'), which implemented sanctions imposed by the UN Security Council. The applicant complained that it had lost the benefit of nearly three years of a four-year lease as a result, and that that was a breach of A1P1. The ECtHR held that the applicant was within the jurisdiction of Irish state as its leased aircraft had been seized in Ireland. There had been an interference with the applicant's property and the seizure of the aircraft was a control of the use of property.

78. The ECtHR decided that the Irish authorities, including the courts, had not exercised any discretion, but had complied with their obligations under EU law. In short, while they were, in strict theory, responsible under the ECHR for the steps which they had taken in seizing the aircraft, the protection of fundamental rights by EC law could be considered equivalent to the protection of the ECHR, and there was a presumption that Ireland had not departed from the ECHR when implementing an EC obligation. That presumption had not been rebutted. It could not be said that the protection of the applicant's rights had been manifestly defective. The seizure of the applicant's aircraft did not violate A1P1.

Nada

79. The applicant lived in Campione d'Italia, a 1.6 km sq area of Italian territory which is wholly enclosed by Canton Ticino. That enclave is part of the Province of Como, but is

separated from the nearest Italian territory either by Lake Lugano or by mountains. From October 1999 onwards, the Swiss authorities implemented UN sanctions against the Taliban and Al-Qaeda by means of successive ordinances. When in November 2001 the UN Sanctions Committee added the applicant to its list, the Swiss authorities added his name to their list. In January 2002, the Swiss authorities amended its Taliban Ordinance in order to subject various people, including the applicant, to an entry and travel ban. After a police investigation of his activities was discontinued the applicant applied for his name to be removed from the list. The Swiss authorities refused. His challenge to that decision failed. The Federal Court held that the Swiss authorities could not remove his name from the list. In September 2009 the UN eventually removed the applicant's name from the sanctions list, and the Swiss authorities took his name off the list annexed to the Taliban Ordinance.

80. The Swiss authorities made three preliminary objections to the applicant's application to the ECtHR. One was that the measures taken against the applicant should be attributed, not to the Swiss authorities, but to the UN. It argued that as the source of the measures was the UN Security Council, they 'fell outside the scope of the Court's review' (paragraph 103).

81. The ECtHR considered, first, whether it had jurisdiction to consider the applicant's complaints. It had to consider whether the application was 'within the scope of art. 1 of the [ECHR] and thus engages the responsibility of the respondent State' (paragraph 116). The ECtHR said that '"Jurisdiction" under art. 1 is a threshold criterion for a Contracting State to be able to be held responsible for acts or omissions attributable to it which give rise to an allegation of infringement of rights and freedoms set forth in the Convention' (paragraph 118). That notion of jurisdiction reflected the meaning of that term in public international law, 'such that a state's jurisdiction is primarily territorial and is presumed to be exercised throughout the state's territory' (paragraph 119). The ECtHR refused to endorse the argument that the sanctions were attributable to the UN and 'were thus incompatible *ratione personae* with the Convention' (paragraph 120). In this case the relevant resolutions required states to act in their own names and to implement them at a national level. The acts in question related to the national implementation of the UN resolutions. 'The alleged violations of the Convention are thus attributable to Switzerland' (paragraph 121).

82. The measures were therefore taken by Switzerland in the exercise of its 'jurisdiction' within the meaning of article 1 of the ECHR, and were capable of engaging the responsibility of Switzerland under the ECHR. 'It also follows that the Court has jurisdiction *ratione personae* to entertain the present application' (paragraph 122). The ECtHR then held that the applicant's complaints under articles 8 and 13 were admissible, and well founded (in the case of the application under article 8, on limited grounds). It held that his complaint under article 5 was inadmissible.

Discussion

83. I will now consider the issues. I will consider them in their logical order, which is, in part, a product of their sequence and prominence in the arguments which were put to the Judge, rather than in the oral arguments in this court. The relative importance given by DANA to their arguments before the Judge, obviously, explains why he approached

them as he did, and, in particular, why he paid much more attention to the arguments about proportionality than he did to the common law arguments. The second and third arguments are legally distinct, but, because of the way DANA chose to argue its case in the Administrative Court, there is little difference between them, on the facts of this case. There are three main issues.

1. Was DANA within the jurisdiction of the United Kingdom for the purposes of article 1 of the ECHR? This includes the argument about 'goodwill'.
2. Did the decision to designate DANA meet the four parts of the test in *Bank Mellat*?
3. Was the decision irrational at common law?

Jurisdiction

84. With all respect to Mr Birdling, I found his argument on jurisdiction difficult to understand. I accept Sir James Eadie's submission that the relevant decisions of the Grand Chamber are clear. Jurisdiction for the purposes of article 1 of the ECtHR is primarily territorial. Subject to the argument about goodwill, which I consider in paragraph 90, below, DANA, a company with no presence, business or assets in the United Kingdom was/is not 'within' the 'jurisdiction' of the United Kingdom for the purposes of article 1 of the ECHR. This view is reinforced by section 21 of the 2018 Act. There appears to be no scope for the 2018 Act to have extra-territorial effect in the case of an entity like DANA which is not a 'United Kingdom person'.

85. I also accept both the qualification acknowledged by Sir James Eadie (that the Grand Chamber has created exceptions to that general rule), and the proviso to that qualification (that the exceptions are based on clearly articulated principles). I further agree with his submissions that this court should not go further than the Grand Chamber has gone (*R (AB) v Secretary of State for Justice* [2022] AC 487 58-59); that this case is not within any of those exceptions; and that this court should not therefore create a further exception for sanctions which do or might have extra-territorial effects. It does not help DANA in any way merely to show that the ECtHR has not expressly ruled out jurisdiction in a sanctions case. The dearth of relevant decisions is explained by *Bosphorus*, and by the fact that in the two cases against Switzerland, the sole focus of the government's defence was an argument about attribution (see further, paragraph 87, below).

86. I agree with Sir James Eadie's argument, further, that a principle which is relevant to this appeal can be inferred from the reasoning in *MN*. That principle is that the facts (1) that a decision is made within the jurisdiction of a contracting state and (2) that it has serious implications for a person who is outside the jurisdiction are not enough to bring that person within the jurisdiction for the purposes of article 1 of the ECHR. That principle also emerges from *Agostinho*. I also reject Mr Birdling's hint that there might be some procedural basis for jurisdiction in this case. It does not help DANA in this case that the ECtHR has recognised that an applicant may in some circumstances be able to bring proceedings in a domestic court in relation to some acts done abroad by a government.

87. There are two main reasons why *Nada* does not help DANA. First, no point was taken about jurisdiction in that case. The principal issue was whether sanctions ordered by the UN Security Council should be attributed to the Swiss authorities or not. The ECtHR did not consider any point about jurisdiction, let alone decide any such point. *Al Dulimi* adds nothing to DANA's case. The issue was, again, attribution. The ECtHR followed *Nada*. Nothing was said about jurisdiction, perhaps because, in that case, the applicant did have assets within the territorial jurisdiction of Switzerland.

88. I add that the approach in *Bosphorus* did not apply to the Swiss authorities, as Switzerland was not and is not a member state of the European Union. The United Kingdom was, but is no longer. Now that the sanctions regime in the United Kingdom is not derived directly from EU law, the ECtHR could in theory consider an application from an entity such as DANA about sanctions imposed by the United Kingdom. It is inconceivable, however, that the ECtHR would do so otherwise than in accordance with it settled case law on jurisdiction. For the reasons I have just given, the ECtHR could not decide, consistently with that case law, that DANA was within the jurisdiction of the United Kingdom for the purposes of article 1 when the Secretary of State maintained its designation.

Proportionality

89. This question does not arise if I am right about jurisdiction. I will consider it, nevertheless, in case I am wrong. The Judge gave full and clear reasons for deciding that all four parts of the test in *Bank Mellat* were met (see paragraphs 54-65 above). Some parts of his reasons were either not challenged at all on this appeal, or only faintly. He directed himself correctly in law and the evaluative assessments which he made were not only open to him, but plainly right. I accept that one of the effects of *Shvidler* is that this court could re-visit, on this appeal, the Judge's assessment of proportionality, even if, as here, there is nothing wrong with that assessment. This court should, however, reject Mr Birdling's invitation to do that. *Shvidler* is an extensive, recent, and authoritative examination of every aspect of proportionality in the context of sanctions. In both the appeals in *Shvidler* the measures in question had considerably greater and more intrusive effects on persons who were within the United Kingdom's jurisdiction than any conceivable possible effects of the designation in this case. Contrary to Mr Birdling's submission, the theoretical if not illusory effects of this designation (see the next paragraph), far from being a reason for this court to revisit the Judge's careful assessment, make that exercise redundant. The fact that this is the first case in which the claimant is outside the United Kingdom and has no assets here does not improve the justification for this court to revisit the Judge's assessment.

Goodwill

90. The Judge directed himself correctly about the relevant law, which is summarised in *Breyer*. He considered the arguments with great care (see paragraphs 46-53, above). There is no error in his reasoning. I cannot improve on it, and so will not repeat it.

Rationality

91. The words 'rationally' and 'irrationally' has been used loosely in this appeal, mostly by DANA. For the purposes of this judgment I accept Ms Lester's implied submission that in public law generally, those words can be a shorthand for a range of linked public

law constraints on decisions governed by public law. Those protections include the requirement imposed by the legislative scheme to give short reasons for the decision, the requirement genuinely to exercise a discretion conferred by the legislation, the requirement not to act for an improper purpose, the requirement to take into account relevant considerations and not to take into account irrelevant considerations, and the requirement to take reasonable steps to find out the information which is necessary to make a decision. The potential width of these words only take DANA so far on this appeal, for three reasons, as I shall explain. The first reason depends on the nature of the discretion to designate an 'involved person'. The second is the way in which DANA actually presented its 'rationality' argument to the Judge. A third, which is linked with the second, is that in the Administrative Court DANA itself used the word 'irrational' and its cognates to denote *Wednesbury* unreasonable conduct, and not in some different sense.

92. There are two points about the Regulations which are potentially relevant to this part of the argument. They are the nature of discretion to designate, and the amount and reliability of the information which is available to the Secretary of State in these cases.

93. First, a premise of the Regulations is that the Secretary of State may decide to designate a person once he has decided that the relatively low threshold for designation is met. That is the starting point for the exercise of the discretion. The rule-maker has not put any further obstacles in the way of the exercise of the discretion, and it is not for the Secretary of State to do so. There is, nevertheless, a theoretical scope for the exercise of a discretion. But that scope is narrow. A persuasive point which emerged from Ms Lester's oral submissions is that it must be open to the Secretary of State to decide not to exercise the discretion in a case in which there are reasonable grounds to suspect that somebody is an involved person, but the Secretary of State decides, on reasonable grounds, that it is a de minimis case. This case, however, is not, on any view, such a case.

94. Second, these are cases in which there is an enormous amount of potentially relevant information. Some of it will be more, and some less, reliable. In an overseas case, it may be very difficult to verify information, especially information which is provided by the subject of the designation, who will necessarily have an incentive to minimise his involvement in activities which might make him an 'involved person'. In this case, for example, DANA made voluminous exculpating representations to the Secretary of State. The Regulations accommodate those constraints in at least two ways. The first is the low threshold for designation. The Secretary of State does not have to make findings of fact on the balance of probabilities; the test, instead, is 'reasonable grounds to suspect'. The second is that the nature of the duty to give reasons. By virtue of section 11(7) of the 2018 Act, the regulations must require the Secretary of State to give a statement of reasons. Regulation 8 reflects that requirement (see paragraph 34, above). The reasons are to be brief, and the Secretary of State is not required either to itemise, or to explain what he has made of, any representations made by the designated person.

95. DANA's 'rationality' challenge before the Judge did not rely on all the features I have described in the paragraph 90, above. I have summarised, in paragraph 2, above, the limited extent of DANA's 'rationality' argument before the Judge. The main problem for DANA on this part of the appeal is a forensic problem of its own making. It chose,

in the Administrative Court, first, to stress its arguments on proportionality and very much to give second place to its arguments on 'rationality'. Second, the 'rationality' argument which it did run was a very limited one.

96. It is not surprising, therefore, that the structure of the Judge's reasoning faithfully reflects that emphasis. He cannot be criticised for considering DANA's arguments in the sequence, and in the hierarchy, in which DANA presented them to him. The reason he saw the 'rationality' arguments as 'parasitic' on the proportionality arguments was not an independent analytical insight which he wrongly imposed on DANA's case, but the product of DANA's own presentation of its case.

97. I have already said that there was a narrow theoretical scope for the exercise of a discretion once the Secretary of State had decided that the threshold was met. No-one suggests that this was a de minimis case. The cri de coeur at the heart of DANA's case, in this court and below, was well understood by the Judge (he summarised it for the first time as early as paragraph 6). It was that 'far from being a beneficiary or supporter of the Belarusian Government, the opposite is true…[it was] in fact subject to harsh sanctions and oppressive treatment by the Belarusian authorities because it is considered a foreign-owned company unfriendly to the economic interests of Belarus and the Lukashenko regime'. The Judge rightly rejected that plea as irrelevant in paragraph 87 (see paragraph 62, above). He also held that DANA's attempts to distance itself from the BNOC were irrelevant to the Secretary of State's decision (paragraph 37, see paragraph 37, above).

98. DANA did apparently plead an argument that the Secretary of State could not rationally have exercised the discretion to designate it, as the Judge explained in paragraph 29. That is how both the Secretary of State and the Judge had understood the pleading. But it seems that DANA disavowed that argument before the Judge, and argued, instead, that it was 'irrational on conventional public law principles for the Secretary of State to have decided that [DANA] was an "involved person" [on the basis of its sponsorship of the BNOC]…' (paragraph 30). The Judge summarised the arguments and concluded, in paragraph 38, that the Secretary of State's view that there were 'reasonable grounds to suspect' that DANA was an involved person on that basis was 'plainly rational'. The only other 'rationality' argument which DANA ran before the Judge was parasitic on the proportionality argument and the Judge was right to reject it. Like the Judge, I would reject DANA's 'rationality' argument in those two guises. I would also reject the different argument on which it relied in this court.

Conclusion

99. For those reasons I would dismiss this appeal.

Lord Justice Bean, Vice President, Court of Appeal, Civil Division

100. I agree with Elisabeth Laing LJ that this appeal should be dismissed. I wish to add a few comments on what I see as the principal issues in the case.

ECHR Article 1

101. Ms Lester and Mr Birdling argue that, notwithstanding that DANA has no business and no assets in the UK, the potential for future "goodwill in the UK" is a possession

protected by ECHR A1P1. But before one gets to A1P1 the Claimant company must first show that it was "within the jurisdiction" for Article 1 purposes. The critical question to be decided is thus whether economic sanctions against a foreign-registered company which has no place of business or assets in the UK, but has ambitions to do business here, mean that the company is "within the jurisdiction" for the purposes of Article 1.

102. Successive decisions of the Grand Chamber at Strasbourg, notably *MN v Belgium* (5 May 2020), have emphasised the exceptional nature of treating persons located outside the jurisdiction of a State as being within its jurisdiction for Article 1 purposes. Much of the case law is set out in paragraph [48] of the judgment of Saini J which Elisabeth Laing LJ has cited. As recently as April 2024 in *Agostinho v Portugal* the Grand Chamber refused to expand the grounds for extraterritorial jurisdiction, holding at [205] that Article 1 "requires control over the person himself or herself rather than the person's interests as such", and that to hold otherwise would "entail a radical departure from established principles under Article 1". The idea that jurisdiction can be created by potential future goodwill in a business yet to be started in the UK seems to me an invitation not to run ahead of the Strasbourg jurisprudence, but flatly to contradict it. On the Appellant's argument any company anywhere in the world which would like to do business in the UK is "within the jurisdiction" for Article 1 purposes.

103. The Swiss cases, which preceded both *MN* and *Agostinho*, take the matter no further for the reasons given in [87] of the judgment of Elisabeth Laing LJ. The point about jurisdiction was not considered by the ECtHR in either case.

104. I consider that DANA falls at the first fence: it is plainly not "within the jurisdiction" of the UK for ECHR Article 1 purposes.

Proportionality

105. This is largely, if not entirely, parasitic on Ground 1. But even if it is not, I agree with Saini J's conclusion that all four elements of the *Bank Mellat* test were clearly met. In particular, he was right to reject DANA's arguments on the "rational connection" issue for the reasons he gave at paragraphs [82]-[83] of his judgment. This has become clearer still in the light of the recent decision of the Supreme Court in the conjoined appeals of *Shvidler* and *Dalston Properties.*

106. Saini J handed down his judgment on 11 February 2025. On 2 May 2025 Dingemans LJ granted permission to appeal to this court. So far as the proportionality and rationality grounds of appeal were concerned he said nothing about their prospects of success but held that there was a compelling reason to grant permission to appeal, namely that the judgment of the Supreme Court on appeal from the decision of this court in *Dalston Properties* (and also the decision in *Shvidler*) was awaited. We now have that judgment, which was given on 29 July 2025.

107. The facts of *Shvidler* are particularly striking. Mr Shvidler was a British citizen. The sanctions against him, including a worldwide freezing of his assets, were described by the Supreme Court (at [210]) as "severe and open-ended" and "obviously very drastic". Nevertheless the Court, by a majority of four to one, held that his designation was proportionate and lawful. They rejected an argument based on the supposed

arbitrariness of designating Mr Shvidler but not other wealthy business persons connected with Russia; and also an argument in the *Dalston Properties* appeal that there was no rational connection between the detention of Mr Naumenko's yacht and the UK Government's aim of putting pressure on Russia. In the light of this decision DANA's argument on proportionality seems to me to be hopeless, and had the Supreme Court decision been available when permission to appeal was being considered I venture to doubt whether Dingemans LJ would have granted permission on that ground.

Rationality

108. I infer that it may have been the Supreme Court's emphatic findings on proportionality in *Shvidler* which led to a dramatic change of emphasis in the arguments presented to us from those put to Saini J. In the Claimant's skeleton argument in the Administrative Court, Ms Lester and Mr Birdling dealt with jurisdiction at paragraphs [15]-[23]; proportionality, including the rational connection issue (which Saini J said was the main focus of the oral submissions before him) and the alleged lack of fair balance between the Claimant's fundamental rights and the wider interest of the community at [24]-[70]; and only added rationality at the very end of the skeleton argument, in the following terms:-

> "71. Alternatively, for all of the reasons set out above, the Secretary of State could not, on the basis of the material before him at the time of the review decision, rationally have concluded that there were sufficient grounds to justify maintaining the Claimant's designation.
>
> 72 In particular:
>
> (1) The Secretary of State could not rationally have concluded that there were "reasonable grounds" to suspected that Dana is or has been involved in the repression of civil society or democratic opposition in Belarus. Here, the Secretary of State relies solely on the fact that Dana "is a sponsor of the BNOC". That is not correct. Dana terminated its sponsorship of BNOC in January 2021. Neither could the Secretary of State rely on the fact that Dana "has been" a sponsor of the BNOC because Dana did not sponsor the BNOC at a time when there was any concern over the conduct of the BNOC.
>
> (2) The Secretary of State could not rationally have concluded that there were "reasonable grounds" to suspect that Dana is or has been involved in obtaining a benefit from the Government of Belarus. The Regulations do not contain a categorical proscription on entities operating within particular sectors of the Belarussian economy. Thus, is not sufficient to suspect that an entity is carrying on business in, for example, the construction sector; it is necessary to also have a rational basis for concluding that the entity is "obtaining a benefit from or supporting" the Government of Belarus. Even though Dana operates in a sector of strategic significance to the Government of Belarus (namely the Belarusian construction sector), it cannot be said to be

> "obtaining a benefit from or supporting" the Government of Belarus for all of the reasons set out above.
>
> 73. For this further reason, the Claimant's designation should be set aside."

109. It is hardly surprising that the judge dealt with these submissions in short order. As Elisabeth Laing LJ rightly says, the fact that Saini J saw the rationality arguments as parasitic on the proportionality argument was not an independent analytical insight which the judge wrongly imposed on DANA's case, but was the product of the Claimant's own presentation of that case. Nevertheless, Ms Lester addressed us first on rationality, which occupied more than half of the time taken in the Appellant's submissions at the hearing before us. I agree with Elisabeth Laing LJ that, for the reasons she gives, the appeal on rationality should fail.

110. Accordingly, I too would dismiss this appeal.

Sir Geoffrey Vos, Master of the Rolls

111. I agree with both judgments.