Human Rights as Balancing Tools – The Principle of Proportionality
Right affected in legal and non-discriminatory manner:

- **Suitability**: Useful to purpose
- **Necessity**: Least intrusive
- **Fair balance**: Weigh interests
- **Essence**: Not destroy
• A test of strict necessity is not warranted.
• Alternative solutions does not render measures unjustified
• Constitutes one factor in reasonable and suited to achieving the legitimate aim
• Not for the Court to say whether legislative discretion should have been exercised in another way
• Minimum and maximum protection
THE ESSENCE OF RIGHTS
BELGIAN LINGUISTIC CASE (1968)

• Never injure the substance of the right
• Nor conflict with other rights
• Relative and absolute core
SUITABILITY OF MEASURES

- No benefit to the aim: no good is done by action
- No danger to the aim: no harm is done by omission

- Dualistic suitability:
  - Perspective of protected right
  - Perspective of pursued aim
FAIR BALANCE

• Openness and criticism of human rights.
  – States too much leeway to undermine human rights
  – Judges too much leeway in promoting human rights

• Law and politics

• Justification and legitimacy