



30 April 2021

## PRESS SUMMARY

**Zabolotnyi (Appellant) v The Mateszalka District Court, Hungary (Respondent)**  
[2021] UKSC 14  
*On appeal from [2019] EWHC 934 (Admin)*

**JUSTICES:** Lord Lloyd-Jones, Lord Hamblen, Lord Leggatt, Lord Burrows, Lord Stephens

### BACKGROUND TO THE APPEAL

The respondent, the Mateszalka District Court, Hungary, requested the extradition of the appellant, Mr Zabolotnyi, pursuant to an accusation European Arrest Warrant (“**EAW**”). The EAW is in the correct form and contains all necessary information. However, Mr Zabolotnyi resists extradition on the ground that there is a real risk that he would be held in prison in Hungary in conditions which amount to inhuman or degrading treatment contrary to article 3 of the European Convention on Human Rights (“**ECHR**”), in particular due to the lack of personal space in cells.

In 2015, the European Court of Human Rights (“**ECtHR**”) upheld a number of complaints of inhuman or degrading treatment contrary to article 3 ECHR arising from overcrowding in Hungarian prisons (*Varga v Hungary* (2015) 61 EHRR 30). In other decisions, the ECtHR has made it clear that, to comply with article 3, each detainee should normally have at least three square metres of floor space.

In September 2017, District Judge Snow ordered Mr Zabolotnyi’s extradition to Hungary. The District Judge held that Hungary was aware of its obligations under article 3 ECHR and had taken significant steps to improve its prison estate and reduce overcrowding. He was therefore satisfied that the presumption that Hungary was compliant with article 3 ECHR had been restored, and that there was no need to request an assurance from Hungary in respect of the prison conditions in which Mr Zabolotnyi would be held.

Mr Zabolotnyi appealed to the Divisional Court against the extradition order. Before his appeal was heard, the Divisional Court held in another case, *Fuzesi v Hungary* [2018] EWHC 1885 (Admin), that assurances in respect of prison conditions are required to permit extradition to Hungary. Following this decision, the Hungarian Ministry of Justice provided a personal assurance to Mr Zabolotnyi that he would be held in one of two modern prisons, Szombathely or Tiszalök, in conditions that guarantee him at least three square metres of personal space.

Mr Zabolotnyi applied for permission to rely on fresh evidence at his appeal hearing, which was not available to the District Judge at the extradition hearing. This evidence comprised reports of Dr András Kádár detailing alleged breaches of assurances given to persons extradited to Hungary, drawn from accounts given by individual prisoners after their return. Three of those prisoners had been extradited to Hungary from the UK, and two from Germany.

The Divisional Court refused to admit the evidence of Dr Kádár and dismissed Mr Zabolotnyi’s appeal. The Court held that it could only consider evidence concerning alleged breaches of assurances given to a third state, such as Germany, if it was satisfied that the evidence was manifestly credible, directly relevant to the issue to be decided, and of real importance for the purpose of that decision. The issue

for the Supreme Court in this appeal is whether there is any such heightened test for the admissibility of evidence concerning alleged breaches of assurances given to a third state.

## JUDGMENT

The Supreme Court unanimously holds that there is no heightened test for the admissibility of evidence concerning alleged breaches of assurances given to a third state. However, it dismisses Mr Zabolotnyi's appeal on the basis that the Divisional Court was bound by section 27 of the Extradition Act 2003 ("the **2003 Act**") to uphold the District Judge's extradition order. This is because the fresh evidence could not be considered decisive in favour of Mr Zabolotnyi, so it could not have resulted in a different outcome in this case. Lord Lloyd-Jones gives the judgment, with which all members of the Court agree.

## REASONS FOR THE JUDGMENT

Extradition between the UK and the EU member states is governed by Part 1 of the 2003 Act, which was enacted to give effect to the EU Council Framework Decision on the EAW (2002/584/JHA) ("the **Framework Decision**"). The 2003 Act has been amended to reflect the UK's withdrawal from the EU. However, since Mr Zabolotnyi was arrested before the commencement of these amendments, they do not apply in his case. This appeal has therefore proceeded on the basis that Hungary is a designated Category 1 territory pursuant to section 1 of the 2003 Act [1-4].

The EAW is designed to create a simplified and accelerated procedure for extradition based on a high level of confidence between EU member states. Both the Framework Decision and the decisions of the Court of Justice of the European Union ("**CJEU**") emphasise the importance of mutual trust between member states in this context [31-33]. The case law of the ECtHR and the CJEU establishes that, where the state requesting extradition is a party to the ECHR and an EU member state, there is a presumption that it will comply with its human rights obligations, and that cogent evidence will be required to rebut this presumption [37-42, 44]. The same presumption of compliance applies where the issuing judicial authority provides, or at least endorses, assurances concerning the conditions in which the requested person will be detained following their extradition. However, the assurance given to Mr Zabolotnyi in this case was provided by the Hungarian Ministry of Justice. It was neither provided nor endorsed by the Mateszalka District Court, which is issuing judicial authority. In these circumstances, the court is required to evaluate the assurance, which means that it must examine and assess the available evidence relating to it [34-35].

Evidence of past non-compliance with an earlier assurance will obviously be relevant to the court's assessment, regardless of whether the earlier assurance was given to the UK or to a third state. A state's failure to fulfil assurances it has given in the past may be a powerful reason to disbelieve that its assurances will be fulfilled in the future. The Divisional Court was therefore wrong to adopt a heightened test for the admissibility of evidence of an alleged breach of an assurance given to a third state. Such evidence should instead be evaluated in the same way as any evidence of breach of an earlier assurance given to the UK: that is, having regard to all the circumstances of the case and bearing in mind that cogent evidence is needed to rebut the presumption of compliance [45-50].

In the present case, Mr Zabolotnyi sought to rely on fresh evidence which was not before the District Judge at the extradition hearing [51]. His appeal was brought pursuant to section 26 of the 2003 Act, which means that the Divisional Court could only allow it if all of the conditions in section 27(4) were satisfied. The condition in section 27(4)(b) is particularly restrictive: it provides that an appeal can only be allowed if the fresh evidence would have resulted in the judge deciding the relevant question differently at the extradition hearing (*The Szombathely City Court v Fenyvesi* [2009] EWHC 231 (Admin)). Accordingly, while the court has a general power to admit fresh evidence as part of the inherent jurisdiction of the High Court to control its own procedure, it can only allow an appeal brought pursuant to section 26 if the fresh evidence would be decisive of an issue arising in the case [56-58].

The Divisional Court refused to admit the evidence of Dr Kádár, but considered it *de bene esse* (i.e. on a provisional basis) [59]. It concluded that, given the paucity of the evidence, it was not appropriate to

make findings of fact in relation to the alleged breaches of assurances given to the two prisoners extradited from Germany. The Supreme Court agrees that the Divisional Court came to the only conclusion that was open to it. The fresh evidence was not sufficiently cogent to be capable of rebutting the presumption that the assurance provided to Mr Zabolotnyi by the Hungarian Ministry of Justice could be relied upon, nor did it require the Divisional Court to request further information from Hungary pursuant to article 15(2) of the Framework Decision. This means that the condition in section 27(4)(b) could not have been satisfied, so the Divisional Court was bound by section 27 of the 2003 Act to dismiss the appeal [61-63].

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

**NOTE**

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

<http://supremecourt.uk/decided-cases/index.html>