



## Press Summary

8 November 2023

### Popoviciu (Respondent) v Curtea De Apel Bucharest (Romania) (Appellant)

[2023] UKSC 39

*On appeal from [2021] EWHC 1584*

**Justices:** Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Kitchin, Lord Hamblen, Lord Stephens

#### Background to the Appeal

In 2016, Gabriel Popoviciu was convicted in the Bucharest Court of Appeal of offences relating to a conspiracy to transfer a plot of land from state ownership to a private company in which he had an interest. He was sentenced to 7 years' imprisonment.

On 3 August 2017, a European Arrest Warrant was issued by the Bucharest Court of Appeal seeking the return of Mr Popoviciu to serve his sentence. He was arrested in the UK on 14 August 2017 and on 12 July 2019, Westminster Magistrates' Court ordered his extradition.

Mr Popoviciu appealed to the High Court. At this stage, he brought evidence alleging that there was an improper and corrupt relationship between Judge Tudoran, who had presided at Mr Popoviciu's criminal trial, and a key prosecution witness. On the basis of this evidence, the High Court held that there were substantial grounds for believing there was a real risk that Mr Popoviciu's trial was so flagrantly unfair that his right to liberty under Article 5 of the European Convention on Human Rights ('**the Convention**') would be violated if he were returned to Romania. The High Court discharged Mr Popoviciu and quashed the order made by the Magistrates' Court.

Having done so, the High Court certified that its decision involved a point of law of general public importance about the standard of proof in cases where a person alleges that extradition would violate their human rights because the trial where they were convicted was flagrantly unfair. The point it certified was: *'In a conviction extradition case, is it sufficient for the requested person to show substantial grounds for believing that there is a real risk that his trial was so flagrantly unfair as to deprive him of the essence of his article 6 rights, and therefore a real risk that his imprisonment in the requesting state will violate his article 5 rights?'*

The Romanian authorities appealed the decision to the Supreme Court.

## **Judgment**

On 26 May 2023, soon after the Supreme Court heard the appeal, the Bucharest Court of Appeal suspended the execution of Mr Popoviciu's conviction and sentence. On 13 July 2023, the Supreme Court was informed by the designated authority that the European Arrest Warrant had been withdrawn. The Supreme Court made an order dismissing the Romanian authorities' appeal pursuant to section 43(4) of the Extradition Act 2003.

The Court nevertheless decided to deliver its judgment, to answer the question that had been certified by the High Court, and to address other issues which had been raised in the appeal.

## **Reasons for the Judgment**

As the European Arrest Warrant had been withdrawn following the hearing of the appeal, the Supreme Court dismissed the appeal by the Romanian authorities, in accordance with section 43(4) of the Extradition Act 2003.

The Supreme Court holds that the High Court misdirected itself and applied the wrong standard of proof when it decided the case. Mr Popoviciu had to show that the allegations of bias and corruption that he made against Judge Tudoran were true on the balance of probabilities, rather than showing merely that there were substantial grounds for believing that there was a real risk that they were true. Where a requested person alleges that they have been convicted in a trial that was so flagrantly unfair that it deprived them of the essence of their right to a fair trial under Article 6, and that accordingly extradition would violate their right to liberty under Article 5, they have to prove on the balance of probabilities that the trial was flagrantly unfair, subject to an exception for cases involving evidence obtained by torture [78].

The Supreme Court also explains that, if the European Arrest Warrant had not been withdrawn, it would have remitted the case to the High Court to decide a specific issue. When the matter was first before the High Court, the Romanian authorities relied upon evidence stating that even if the undisclosed relationship between Judge Tudoran and the prosecution witness were proven, it would not constitute a reason to review a final decision under Romanian legislation [30]. This raised the issue of whether there would be an effective remedy for Mr Popoviciu to challenge the lawfulness of his detention in Romania if he were extradited, as required by Article 5(4) of the Convention [104]-[105]. The experts subsequently relied upon by each party disagreed about whether there was an effective remedy under Romanian law that would allow Mr Popoviciu to challenge his conviction and the fairness of the criminal proceedings. If the European Arrest Warrant had not been withdrawn, the Supreme Court would therefore have remitted this issue to be decided by the High Court, where the parties' experts could be cross-examined [108].

*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**

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