

**IN THE SUPREME COURT OF THE UNITED KINGDOM**

**UKSC/2026/0053**

**ON APPEAL FROM THE COURT OF APPEAL (CIVIL  
DIVISION)**

**UKSC/2026/0055**

**BAKER, LAING AND FALK LJJ [2026] EWCA Civ 31**

**BETWEEN**

**KATARINA VARGOVA**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Respondent**

**TOMAS MOLNAR**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Respondent**

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**SUBMISSIONS OF THE INDEPENDENT MONITORING  
AUTHORITY FOR THE CITIZENS' RIGHTS AGREEMENT  
(the "IMA") ON PERMISSION TO APPEAL  
PURSUANT TO SUPREME COURT RULE 16(1)**

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## A. INTRODUCTION

1. The IMA is the statutory body responsible for monitoring the implementation and application of Part 2 of the Withdrawal Agreement ("WA"). It is the supervisory body with certain powers equivalent to those of the European Commission set out in Art 159 of the WA. The IMA supports both applications for permission to appeal. To avoid duplication, the IMA fully endorses the Vargova Grounds of Appeal 1A and 1B based on *Chenchooliah* (C-94/18). These submissions focus on the correct approach to interpreting Arts 20 and 21 WA under Art 4 WA. The Court failed to apply the correct interpretive framework when construing these provisions, with the consequence that its conclusions as to their effect are wrong.

## B. THE CORRECT INTERPRETIVE FRAMEWORK: ARTICLE 4 WA

2. The Court of Appeal began its analysis of Art 20 WA at §126 by stating that *"The most important aspect of the context for interpreting Article 20 is that EU law has ceased to apply in the United Kingdom."* That is the wrong starting point. The starting point required by the WA itself is Art 4 WA, headed *"Methods and principles relating to the effect, the implementation and the application of this Agreement."* Art 4 contains four requirements central to the issues:
  - (a) **Art 4(1)**: the provisions of the WA and provisions of Union law made applicable by it *"shall produce in respect of and in the United Kingdom the same legal effects as those which they produce within the Union and its Member States."* This is the overarching requirement of Art 4. The rules which follow show how the "same legal effects" across the UK and EU Member States are to be produced;
  - (b) **Art 4(2)**: the duty to *"ensure compliance"* with Art 4(1) is imposed on the judiciary, as well as the Respondent;
  - (c) **Art 4(3)**: provisions of the WA *"referring to Union law or to concepts or provisions thereof shall be interpreted and applied in accordance with the methods and general principles of Union law."* This includes an obligation of interpretation as well as application; and it is difficult to think of a general principle of Union law more firmly entrenched than that any restriction or limitation of rights must be proportionate;
  - (d) **Art 4(4)**: such provisions *"shall in their implementation and application be interpreted in conformity with the relevant case law of the [CJEU] handed down before the end of the transition period"* (in this case, *Chenchooliah*).

3. Arts 20 and 21 of the WA are plainly provisions “referring to” Union law, or to concepts or provisions thereof, so Art 4(3) applies to those provisions as a whole. They expressly refer to Union law provisions. Art 20 is headed “*Restrictions on the rights of residence and entry*” and then provides for three situations in which restrictions on those rights may in principle be imposed. Art 21 (headed “*Safeguards and right of appeal*”) then requires that “*the safeguards*” set out in Art 15 and Chapter VI of Directive 2004/38 (the Citizens’ Rights Directive, “CRD”) “*shall apply*” in respect of “*any decision...that restricts residence rights*”. Art 27(2) CRD provides that restrictive measures taken on personal conduct grounds (in that case “grounds of public policy or public security”) “*shall comply with the principle of proportionality*”. Art 31 CRD (headed “*Procedural safeguards*”) specifies, amongst other “*procedural safeguards*” that the redress procedures must ensure “*that the decision is not disproportionate*”. The UK and EU have agreed that the CJEU is the ultimate arbiter on the “*interpretation*” of Arts 20 and 21 (see Arts 4 and 158 WA; Art 158 is part of Title 1 (“*Consistent interpretation and application*”). It is submitted that the CJEU would have little difficulty in finding that it follows from the express terms of Arts 20 and 21 that (i) proportionality is one of the “*safeguards*” that must be applied to “*any decision... that restrict residence rights*” under Art 20; (ii) the decision of the Respondent to deport must not be disproportionate; and (iii) the appeal or review procedure must ensure that the decision is not disproportionate.
4. The Respondent argues that Art 20(2) WA is not a provision “referring to Union law or to concepts or provisions thereof” because it applies national legislation: §15(1) Notice of Objection. This argument is wrong for three reasons: (i) Art 21 WA - the provision that governs all decisions restricting residence rights, including those under Art 20(2) - expressly and directly refers to Union law instruments: “*Article 15 and Chapter VI of Directive 2004/38/EC*”. Art 21 unquestionably triggers Art 4(3); (ii) the “*right of residence*” which may be restricted under Art 20(2) is defined in Arts 13 to 15 WA explicitly by reference to various Union law provisions which must be given a consistent Union law interpretation and application. As the Court of Appeal confirmed in *Secretary of State for Work and Pensions v AT* [2024] KB 633 at [94], Art 13 WA “*is not self-standing. By its language it brings article 21 TFEU into effect through cross-reference.*” A WA provision restricting rights defined by EU law concepts and provisions is a WA provision referring to those concepts and provisions; (iii) Art 4(3) applies to the WA provisions as drafted; it does not cease to apply simply because the

provision permits national law to define one element (“*the conduct*” which “*may constitute grounds*”) of a wider scheme that expressly refers to, or is defined by reference to, Union law concepts and provisions (the residence rights restricted and the safeguards applicable). So the Respondent’s attempt to carve out Art 20(2) from being subject to Art 4(3) is misconceived. Art 4(3) applies to the whole of Arts 20 and 21 and the Court erred in failing to apply it.

5. Had the Court correctly applied Art 4(3) to the whole of Arts 20 and 21, it would not have erred in its interpretation or application. The method which Art 4(3) requires to be applied to the interpretation of Arts 20 and 21 is the established teleological method of the CJEU, not the black letter law approach adopted by the Court. Art 4(3) contains both a duty of interpretation and a duty of application, and it is submitted this provides two further routes by which the EU proportionality principle would be held to apply by the CJEU:

- (i) when interpreting Arts 20 and 21, which provide the framework for restricting rights of residence, the courts are required to interpret so as to ensure (a) compliance with Art 4(1) WA (to produce the same legal effects in the UK and EU) and (b) the provision is compatible with the general principles of EU law. A provision which permitted accrued rights of residence to be removed on grounds of arbitrary and trivial conduct defined by a host State’s domestic legislation is not in principle compatible with the general principle of EU proportionality, so the CJEU (and domestic court’s duty) is to interpret Arts 20 and 21 compatibly with the EU proportionality principle. This reinforces the point that the correct interpretation of Arts 20 and 21 WA is that any decision which restricts the right of residence (including under Art 20(2)) must comply with the EU proportionality principle. The Court has given Arts 20 and 21 an interpretation which infringes the EU proportionality principle, made applicable by Art 4(3);

- (ii) Art 4(3) contains a distinct obligation when applying Arts 20 and 21. When the Respondent is making the decision to deport, and when a court or tribunal is carrying out the redress procedure, both bodies are required by Art 4(3) to apply Arts 20 and 21 “*in accordance with*” proportionality, as one of the general principles of EU law. That provides an independent means by which the EU proportionality principle must apply to any decision to restrict residence rights under Art 20, in addition to the textual and interpretive arguments set out above. To the extent that the Court had difficulty in working out precisely which parts of the CRD would be carried over into a proportionality assessment (leading it to rely on the “orderly withdrawal” recital and

choose to exclude any proportionality assessment at all, see below), it ought to have made a reference to the CJEU to carry out the task. But the Court also erred in failing to recognise that the Respondent and courts were bound to apply the standard EU proportionality principle in the application of Arts 20 and 21 because Art 4(3) applies to those provisions. The courts are accustomed to applying EU proportionality review; and, as a bare minimum, the Court ought to have held that the EU proportionality principle had to be applied by the Respondent in its decision to deport and by the tribunal at the appellate stage. Instead, the Court relied upon what it perceived to be the complexity of working out precisely how the proportionality principle applied in this context, as a reason for choosing an interpretation which excised all references to proportionality from the CRD provisions it accepted had to be applied by Art 21 WA.

6. In doing so, at [101 and [122], the Court wrongly relied on recitals referring to "*orderly withdrawal*" and "*legal certainty*" as interpretive principles. They have no role in determining the application of EU proportionality, whereas Art 4 is a carefully crafted express provision governing interpretation and application of the WA, and is intended to cover proportionality (through the incorporation of the Union's general principles). The recitals are descriptive of the WA's purpose (to achieve a smooth, non-disruptive withdrawal), not normative rules of construction. The reference to these recitals reflects a deeper misunderstanding by the Court of the extent to which the UK and EU intended Union law provisions, concepts, methods and the general principles of Union law to apply to certain accrued rights of citizens, in order that the WA provisions produce "*the same legal effects*" in the UK and EU (Art 4(1) and "*reciprocal protection*")<sup>1</sup>. The Court was wrong to use the "*orderly withdrawal*" recital to justify a preference for a bright line answer over the legally correct one. Where interpretive uncertainty or difficulty arises as to Part Two provisions, Art 158 WA provides the mechanism for its authoritative resolution by the CJEU.
7. The IMA notes the Respondent has provided no basis for its assertion (§15(2) Notice) that EU host States are not required to apply EU proportionality to Art 20(2) decisions taken in respect of UK nationals with accrued rights of residence in the EU.
8. The Respondent states (§9 Notice) that the protections in Chapter VI CRD which are applied by Art 21 WA are "*those procedural safeguards set out in Arts 30 to 33, i.e.*

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<sup>1</sup> See the recital to the WA preceding the "*orderly withdrawal*" recital: "*it is necessary to provide reciprocal protection for Union citizens and for United Kingdom nationals...where they have exercised free movement rights before a date set in this Agreement...*"

*notification and appeal procedures, and not those substantive protections (in Arts 27 to 29) from which the Appellants seek to derive the application of EU proportionality*". This fails to address the central argument that Art 31 CRD, headed "Procedural Safeguards," provides the right of appeal (31(1)), protection against removal pending interim applications (31(2)), and, critically, Art 31(3): redress procedures *"shall allow for an examination of the legality of the decision, as well as of the facts and circumstances on which the proposed measure is based. They shall ensure that the decision is not disproportionate, particularly in view of the requirements laid down in Art 28."* Art 31(3) is aptly described as a procedural safeguard (as would be expected given the heading of Art 31): it defines the scope of the appellate jurisdiction. The scope of an appeal is a procedural matter. The Court erred in treating "procedural safeguards" as equivalent to formal, notification-only protections.

### **C. PUBLIC IMPORTANCE**

9. The Sentencing Act 2026 expands the scope of the automatic deportation regime under section 32 of the UK Borders Act 2007 ("UKBA 2007"). Section 45 amends the definition of "foreign criminal" in section 38 UKBA 2007 to include non-British citizens convicted in the United Kingdom who receive a *suspended* sentence of twelve months or more. Previously, automatic deportation applied only to those sentenced to immediate imprisonment of that length. The consequence is that a significantly greater number of persons with WA status are potentially caught by the mandatory deportation regime. Parliament retains unrestricted power to lower the threshold further, with no EU proportionality constraint on its doing so, and if the Court and Respondent are correct, EU Member States are free to do the same to UK citizens abroad.

### **D. CONCLUSION**

10. Applying the EU law methods and general principles mandated by Art 4(3) WA, Art 20(2) simply allocates competence to define the "conduct" which may constitute "grounds" of restriction to national legislatures; Art 21 applies safeguards in respect of any decision that restricts residence rights, including the requirement that any decision is not disproportionate. If doubt existed that this is the correct interpretation, the Court ought to have made a reference. Permission should be granted.

**IAN ROGERS KC**  
**Monckton Chambers**

**28 May 2026**