

# **AM (Zimbabwe): What the Supreme Court decided**

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Landmark Chambers**

## AM (Zimbabwe) – Court of Appeal

- Court of Appeal:
  - “Clear” that *Paposhvili* relaxes the test “only to a very modest extent”: para 37. Only “a very modest extension”: para 39;
  - *Paposhvili* “plainly regarded [*N v UK*] as rightly decided”: para 40. Only “clarifying”: para 39(iv);
  - **New test**:
    - Art 3 not confined just to deathbed cases: para 38
    - BUT now includes real risk of being exposed to serious, rapid and irreversible decline in state of health resulting in:
      - Intense suffering; or
      - Significant reduction in life expectancy

## AM (Zimbabwe) – Supreme Court

- **Substantive test**
- Accepted Court of Appeal's interpretation was wrong: para 30
- **Actual test** is:
  - Real risk of being exposed to:
    - Serious, rapid and irreversible decline in state of health resulting in intense suffering; or
    - Significant reduction in life expectancy.

## AM (Zimbabwe) – Supreme Court

- What is “*significant*” reduction in life? (para 31)
  - Means “*substantial*”;
  - “...*death in the near future is more likely to be significant than any other reduction*”
  - “*near future*”? – reduction to 2 years life expectancy “*might well be significant*” for 24 year old but “*might well...not be*” for 74 year old

## AM (Zimbabwe) – Supreme Court

- **Procedural steps**
  - Significant change: “*on no view...mere clarification*”: para 32
  - Previously:
    - Degree of speculation as to impact of removal on health counted against applicant: *N*. Had to prove extent and speed of deterioration as well as amount of treatment in receiving country;
    - Theoretical availability of medical treatment sufficient: *N*.
  - **Now**:
    - Degree of speculation counts in applicant’s favour. No need to show “*clear proof*”;
    - Theoretical availability insufficient. Will applicant actually get treatment?

## AM (Zimbabwe) – Supreme Court

- **Procedural steps:**

1. A must raise prima facie case of potential infringement of Art 3: para 32. Evidence “*capable of demonstrating substantial grounds for believing*” breach:
  - Evidence of treatment in receiving country “*not without some credibility*” or there was “*no guarantee*”: *Paposhvili*, para 197;
2. Burden shifts to State: must dispel “*any serious doubts*” as to availability and accessibility of suitable treatment in receiving state: para 33;
  - General and specific situation in receiving country, cost and proximity of treatment, existence of family network: *Paposhvili*, paras 187 and 191
3. If doubts persist, individual and sufficient assurances: *Paposhvili*, paras 187 and 191

## AM (Zimbabwe)

- *Savran v Denmark* (1 October 2019)
  - Applies *Paposhvili* test;
  - ECtHR finds breach of Art 3
    - S had paranoid schizophrenia
    - Daily ingestion of Clozapine, monitoring with blood tests and fortnightly injection of Risperidone. Both drugs available and free in Turkey;
    - But also needed regular contact person and overall supervision. Otherwise relapse and become dangerous. No evidence about those elements. Also no family network.
    - Strong dissent – pushing Art 3 door wide open. Which element of the test is satisfied?
- Going to Grand Chamber