Neutral Citation Number: [2021] EWHC 957 (Admin)

Case No: CO/1932/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/04/2021

Before :

LORD JUSTICE EDIS

AND

MR JUSTICE SAINI

- -

Between :

THE QUEEN **ON THE APPLICATION OF** **PETER NEVILLE**	**Claimant**
- and –	
SECRETARY OF STATE FOR JUSTICE	**Defendant**

- -
- -

Simon Farrell QC and Ellis Sareen (**Public Access**) for the **Claimant**
Adam Payter (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 30 March 2021

- -

Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judges remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is be deemed to be 10.00am on 20 April 2021.

Lord Justice Edis and Mr Justice Saini:

This joint judgment is in 6 main parts as follows:

I. Overview

1. Peter Neville ("the Claimant") is a serving prisoner repatriated from Thailand on 24 January 2019, following his conviction and sentence in that country for drug offences on 30 November 2011. The Claimant originally received a sentence of imprisonment for life for these offences but, as a result of a collective royal pardon in Thailand issued in April 2015, his punishment was commuted to a determinate period of imprisonment. That period has been modified downwards from time to time as a result of further collective pardons issued by of the King of Thailand.

2. By this claim for judicial review, the Claimant challenges the decision of the Secretary of State for Justice ("the Defendant") of 3 April 2020 refusing to treat him as a *"transferred life prisoner"* and accordingly declining to refer his case to the High Court, in accordance with s.273(1) of the Criminal Justice Act ("CJA 2003"), for a minimum tariff to be fixed before he could (subject to the view of the Parole Board) be released on licence for life.

3. The Defendant has refused to treat the Claimant as a life prisoner within s.273 of the CJA 2003 because at time the Claimant was transferred to the UK by the Thai authorities to serve his remaining sentence in England and Wales, he had received the pardons which the Defendant says meant he was now to be treated as prisoner subject to a determinate sentence of imprisonment

4. The Claimant says that he is in the unfair position of being worse off in the UK as a determinate sentence prisoner than he would have been had he been transferred here from Thailand as a life sentence prisoner. He submits that this unfairness arises because he was made subject to a collective royal pardon which altered his life sentence to a determinate term before his transfer.

5. In summary, his legal argument is that on the facts of his case and applying Thai law he is, as a matter of construction of s.237(1), a "*transferred life prisoner"* within that

subsection, even though he accepts that as a matter of practical reality he is serving a determinate sentence in the UK.

6. As of the date of the hearing before us, the Claimant has spent approximately 12.5 years in custody and will not be entitled to release for a further 8 years. He submits that if his case was referred to the High Court under s.237(1) (and then on to the Parole Board) he will be released with immediate effect.

7. May J granted permission to pursue a single ground ("the Construction Ground") on 20 October 2020, but refused the Claimant permission to advance additional grounds based on the Articles 5, 6 and 14 of the European Convention on Human Rights ("the ECHR"). The Claimant has withdrawn his renewed his application on those grounds but relies upon these Convention rights in support of his submissions on the Construction Ground.

II. The Facts

8. On 8 November 2008, following a police operation, the Claimant was arrested in Phuket Province, Thailand for offences of the supply and possession of illegal drugs. The circumstances of his arrest were that two persons, arrested with drugs in their possession, informed the police that they had bought them from the Claimant. At the request of the police, one of the informants contacted the Claimant and asked to buy drugs from him. Two police officers listened to the conversation and later confirmed it was the voice of the Claimant. The Claimant agreed to meet the informant upon which he was arrested by the police. Drugs were found in the car that he drove to the scene of his arrest and were also recovered from his house following a police search.

9. In total, the Claimant had in his possession for the purposes of sale six bags of methamphetamine with a total weight of 161.972 grams and three bags of cocaine and methylene-dioxyamphetamine with a total weight of 90.137 grams. He was also in possession of a small quantity of cannabis. The evidence against the Claimant included testimony from three police officers, not concerned in the operation leading to his arrest, that *"before arresting the defendant, police officers found that the defendant had sold Methamphetamine and had been under suspicion having exhibited suspicious behaviour while associating with known members of the drug selling network".* The Claimant denied the drugs belonged to him and said he did not know to whom they belonged. He claimed that he had met the informant so that she could repay a loan.

10. On 30 November 2011, following a trial before the Phuket Province Court, the Claimant was convicted of one offence, the equivalent of which, in England and Wales, is possession with intent to supply controlled drugs of type Class A contrary to s.5(3) and Schedule 2 of the Misuse of Drugs 1971 and two offences of simple possession of Class A drugs contrary to s.5(1) of that Act.

11. He was sentenced by the Phuket Province Court to life imprisonment and a fine of 2,000,000 baht ("the Fine"- about £40,000.00). In Thailand, possession of drugs in excess of 20 grams for the purposes of distribution attracts a penalty of life imprisonment and a fine, or death: R(Willcox) v SSJ [2009] EWHC 1483 (Admin) at

[5]. We will need to return to this case in more detail and will refer to it below as "Willcox".

12. On 17 February 2014, the Thai Court of Appeal dismissed the Claimant's appeal against conviction and sentence.

13. On 24 June 2014, the Phuket Province Court issued a warrant of imprisonment, signed by a judge, to the Director of Bang Kwang Central Prison. The warrant stated that the Claimant was the subject of a sentence of life imprisonment and instructed the Director to detain the Claimant for that period.

14. On 1 April 2015, a Thai Collective Royal Pardon ("CRP") was issued by the King. It had no impact upon the Claimant's period of imprisonment but was believed by the Claimant (wrongly, it turns out) to remove his liability to pay the Fine.

15. On 17 June 2016, the Claimant made an application for transfer to the UK. The application identified that, according to Thai law, the Claimant was ineligible for transfer until he had served eight years of his sentence in Thailand.

16. In August 2016, another CRP was issued by Royal Decree in Thailand. This CRP provided for a reduction in punishment for certain classes of offenders. Under the August 2016 CRP, eligible prisoners serving life sentences had these sentences commuted to a determinative term of 50 years, which were then further reduced according to a formula based on their record of behaviour in prison.

17. In September 2016, the Claimant was informed by the British Embassy that his transfer application was cancelled because he was ineligible, having failed to pay the Fine.

18. The August 2016 CRP did not automatically alter the Claimant's sentence. A court order was required. Accordingly, on 4 November 2016, the Phuket Province Court issued a second warrant of imprisonment, signed by a judge, to the Director of Klong Prem Central Prison. The warrant stated that pursuant to the August 2016 CRP, the Claimant's sentence was *"reduce*[d] *1/7 times according to article 10(2)... Therefore, according to the Correction Act, a prison director will decrease a punishment for Mr Peter Neville according to this warrant. After an end date of this punishment the prisoner will be released immediately... Imprisonment for: 42 years 10 months 9 days... Release date: 13 September 2051".*

19. In December 2016, a further CRP was issued by a Royal Decree of the new Thai King. In due course, the Phuket Province Court issued a fresh warrant of imprisonment, again signed by a judge, to the Director of Klong Prem Central Prison. The warrant stated that pursuant to the new CRP the Claimant's sentence was *"reduce*[d] *1/7 times according to article 10(3)... Therefore, according to the Correction Act, a prison director will decrease a punishment for Mr Peter Neville according to this warrant. After an end date of this punishment the prisoner will be released immediately... Imprisonment for: 36 years 8 months 25 days... Release date: 31st July, 2045".*

20. On 20 February 2018, a friend paid the Fine on behalf of the Claimant.

21. The Claimant was then able to initiate the transfer application process. We will address the detail of the mechanics of this process and the respective roles of the Thai and UK

authorities in detail below. But for present purposes, we note that the information provided by the Government of Thailand to the UK during the process included the warrants of imprisonment (referred to above at [18] and [19]) and a document entitled *"Prisoner Imprisonment Data".* The latter stated the *"previous imprisonment"* was a *"life sentence"*, the *"current imprisonment"* as *"36 years 8 months and 25 days"* and the *"remaining imprisonment"* as *"27 years 4 months 4 days"*.

22. The Defendant's understanding of the determinate nature of the Claimant's sentence was conveyed to the Thai authorities in correspondence prior to the Claimant's transfer. In a letter dated 26 June 2018, HM Prison & Probation Service ('HMPPS') wrote to the Government of Thailand. The letter confirmed that the UK would *"continue to enforce the sentence of 36 years 8 months 25 days imprisonment imposed in Thailand".* It explained that the sentence would be deemed to be equivalent to a UK sentence and that the Claimant would be released automatically once he had served one half of the balance at the date of transfer. It said that the letter would be sent to the Claimant along with the necessary consent forms for him to sign.

23. It is not disputed by the Claimant that he was aware that both the Thai and the UK authorities were proceeding on the basis that he was subject to a determinate sentence and not a life sentence. Following receipt of the Defendant's letter, the Thai authorities granted the Claimant's transfer request.

24. On 26 June 2018, in accordance with the requirements of the Repatriation of Prisoners Act 1984 ("the RPA"), HMPPS wrote to the Claimant to provide, amongst other matters, *"information on how* [his] *sentence will be enforced in the UK".* Section 1(4) of the RPA requires that the Defendant shall not issue a warrant for the transfer of a prisoner into the UK unless all reasonable steps have been taken to inform the prisoner of certain matters, including the substance of the international agreements between the UK and Thailand for the transfer of prisoners; the effect on him of a warrant authorising his transfer; the effect on him of the law of the UK relating to detention, including the early release provisions and the powers of the Defendant under the RPA. Section 1(5) of the RPA provides that the Defendant shall not issue a warrant unless he is satisfied that the prisoner has consented. Section 1(6) provides that consent is irrevocable.

25. On 18 July 2018, in accordance with these provisions of the RPA, the Claimant provided written, signed consent to his transfer to the UK. He confirmed that he had been informed in his own language of, amongst other matters, the substance, so far as relevant to his case, of the international arrangements between the UK and Thailand for the transfer of prisoners; the effect in relation to him of the law of the UK relating to his detention under the transfer warrant, including the effect of any provisions under which he may be released earlier than provided for by the terms of the warrant and the powers of the Defendant under s.6 of the RPA which deal with the revocation and issuance of replacement warrants.

26. The Claimant also signed a document entitled *"Information about Her Majesty's Prison and Probation Service (HMPPS) for England and Wales"* which provided information about the different types of sentences – including determinate and indeterminate sentences – and their effect on the release of prisoners.

27. On the facts before us, it is clear that the Claimant gave informed consent to his transfer on the understanding that he was to be treated as subject to a determinate sentence and

that he would be released at the halfway point of the balance of his sentence. The contrary was rightly not suggested by Leading Counsel who appeared on his behalf.

28. On 8 January 2019, the Cross Border Transfer Section of HMPPS stated in a memo to HMP Wandsworth that the Claimant was *"sentenced 30/11/2011 in Thailand to 36 years 8 months 25 days..."*. It is common ground that the date of the imposition of a determinate sentence was incorrectly stated. As we have described, the Claimant was convicted and sentenced to life imprisonment on 30 November 2011 and that sentence was reduced to 36 years 8 months 25 days following the grant of the second CRP. The fact of the determinate nature of the sentence which was now to be served was however correctly stated.

29. On 14 January 2019, a warrant was signed on behalf of the Defendant under s.1(1) of the RPA. It provided as follows:

> "REPATRIATION OF PRISONERS ACT 1984
>
> WARRANT FOR TRANSFER TO AND DETENTION IN THE UNITED KINGDOM
>
> WHEREAS the United Kingdom is a party to an international arrangement providing for the transfer between the United Kingdom and Thailand of persons to whom section 1(7) of the Repatriation of Prisoners Act 1984 (the Act applies);
>
> AND WHEREAS the Secretary of State and the appropriate authority of Thailand have each agreed to the transfer into the United Kingdom, under those arrangements, of the prisoner named Peter Neville, being a person to whom section 1(7) of the Act applies;
>
> AND WHEREAS the prisoner has been sentenced by a court of law in Thailand to 36 years 8 months 25 days imprisonment;
>
> AND WHEREAS the prisoner has consented to being transferred into the United Kingdom in accordance with these arrangements;
>
> AND WHEREAS the prisoner is a British Citizen;
>
> AND WHEREAS the Secretary of State is satisfied that the requirements of section 1(4) and 1(5) of the Act have been fulfilled;
>
> NOW, therefore the Secretary of State, in pursuance of section 1(1) of the said Act, by this warrant authorises the transfer of the prisoner by a prison officer acting under the orders of a Governor of a prison to take the prisoner into the legal custody of the Governor and bring the prisoner to a prison in the United Kingdom from where the prisoner in accordance with the

following provisions of this warrant will be detained as directed by the Secretary of State:

For the term of 9684 days imprisonment".

30. On 24 January 2019, the Claimant was transferred to the UK pursuant to the terms of an acknowledgment of transfer between the British Embassy and the Thai Department of Corrections. He was then detained in a UK prison pursuant to the above warrant.

31. In May 2019, a further Collective Royal Pardon ('CRP') was issued by Royal Decree in Thailand and, on 1 April 2020, an updated warrant of imprisonment was sent to the FCO by the Thai authorities. Again, that warrant refers to a determinate period of detention: the Claimant's updated determinate sentence was identified as 30 years, 7 months, 11 days and the time remaining was stated to be 20 years, 1 month, 13 days.

32. On 20 June 2020, the Defendant issued a new and superseding warrant under s.1(1) of the RPA. Insofar as material it provides as follows:

"REPATRIATION OF PRISONERS ACT 1984

WARRANT SUPERSEDING A PREVIOUS WARRANT FOR TRANSFER TO AND DETENTION IN THE UNITED KINGDOM

WHEREAS the United Kingdom is party to international arrangements providing for the transfer between the United Kingdom and Thailand of persons to whom section 1(7) of the Repatriation of Prisoners Act 1984 applies;

AND WHEREAS the Secretary of State and the appropriate authority of Thailand have each agreed to the transfer into the United Kingdom under those arrangements of the prisoner named Peter Neville being a person to whom section 1(7) of the said Act applies;

AND WHEREAS the said prisoner had been sentenced by a court of law in Thailand to a sentence of life imprisonment;

AND WHEREAS the sentence of life imprisonment had been reduced following the grant of Royal Pardons to a fixed term of imprisonment of 36 years 8 months 25 days imprisonment;

AND WHEREAS the said prisoner is a British Citizen;

AND WHEREAS the said prisoner consented to being transferred into the United Kingdom;

AND WHEREAS the Secretary of State was satisfied that the requirements of section 1(4) and (5) of the said Act have been fulfilled;

> AND WHEREAS the Secretary of State did, on 14th January 2019, issue a warrant under section 1(1) of the said Act for the repatriation to the United Kingdom of the said prisoner;
>
> AND WHEREAS in pursuance of the said warrant, dated 14th January 2019, the said prisoner was on 25th January 2019, transferred into the United Kingdom from Thailand and was received into custody of the Governor of Her Majesty's Prison Wandsworth;
>
> AND WHEREAS following the grant of a further Royal pardon the said sentence of 36 years, 8 months and 25 days has been reduced to one of 30 years, 7 months and 11 days;
>
> AND WHEREAS it now appears to the Secretary of State appropriate, in order that effect may be given to the said Royal Pardon, for the said warrant, 14th January 2019, to be varied;
>
> NOW THEREFORE in pursuance of section 6(1) of the said Act, the Secretary of State hereby revokes the said warrant dated 14th January 2019, and by this warrant authorises that the said prisoner be detained in custody in accordance with the following provisions of this warrant;
>
> (i) that the term the said prisoner is to serve shall be 7451 days imprisonment from the date on which the prisoner was returned to the United Kingdom;
>
> AND IT IS FURTHER PROVIDED in pursuance of section 6(3) of the said Act; (a) the foregoing provisions of this warrant are to be treated for all purposes as having taken effect at the time when the said previous warrant took effect, namely on 14th January 2019; and (b) anything done under or for the purposes of the said previous warrant dated 14th January 2019, are, accordingly, to be treated as having been done under or for the of this warrant.
>
> As of the date of the hearing before us, the Claimant has spent approximately 12.5 years in custody and will not be entitled to release for a further 8 years
>
> …".

33. This updating warrant appears to reflect the history of the CRPs and how they reduced the term of imprisonment, as we have recounted above. We understand however that there are further CRPs which may reduce the determinate period of imprisonment further but they are not ultimately relevant to the legal issues which arise in this claim.

III. Legal framework

Prisoner Transfer Agreement (PTA) between the UK and Thailand

34. Prisoner transfer arrangements between the UK and Thailand are governed by the "Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Thailand on the Transfer of Offenders and on Co-operation in the Enforcement of Penal Sentences" dated 22 January 1990, and in force from 6 February 1991. The PTA was analysed by the Divisional Court in some detail in Willcox at [12]-[25] and we will not repeat that analysis but will confine ourselves to the points which are relevant to the present claim.

35. The objectives of the PTA, recited at its outset, include the desirability of co-operation in law enforcement of penal sentences and the re-integration of offenders into society, which are to be fulfilled by giving foreigners in prison for committing a criminal offence "the opportunity to serve their sentences within their own society."

36. Article 4 is entitled 'Procedure for Transfer'. Article 4(3) provides that the transferring State shall provide the receiving State with, amongst other information, the termination date of the sentence. So, the definitive source of information as to the nature of the sentence is the transferring State. See also Willcox at [13].

37. Article 5, entitled 'Retention of Jurisdiction', provides that "the transferring State shall retain exclusive jurisdiction regarding the judgements of its courts, the sentences imposed by them and any procedures for revision, modification or cancellation of those judgments and sentences".

38. Article 6 is entitled 'Procedure for Enforcement of Sentences'. Article 6(1) provides that the enforcement of the sentence shall be governed by the laws and procedures of the receiving State, including those providing for conditional release. Article 6(2) provides that "the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State" subject to Article 6(3) which provides that it shall not be enforced "in such a way as to extend it beyond the period specified in the sentence. Such enforcement shall as far as possible correspond with the sentence imposed in the transferring State."

39. Article 6(4) provides that "If the transferring State revises, modifies or cancels the judgement or sentence pursuant to Article 5 of this Agreement or otherwise reduces, commutes or terminates the sentence, the receiving State shall upon being notified of the decision give effect thereto in accordance with this Article". It follows that all types of change to a sentence (by appeal or matters such as prerogative action) must be recognised by the receiving State. The article makes no distinction between the different type of steps under local law which cause the sentence to be modified. Whether a sentence is reduced by court order or acts of executive actions matters not.

40. Pursuant to Article 6(6), the receiving State is required to provide information to the transferring State concerning the enforcement of the sentence, including when a prisoner is granted conditional release and when the sentence is completed.

41. It is not in dispute that when the PTA was negotiated between Thailand and the UK, the Thai government did not agree to prisoner transfer on the basis that the receiving State could, having given notice to the transferring State, convert sentences to ones that

it would have imposed. Thailand would only agree to transfer on the basis of the 'continued enforcement' of its sentences: see Willcox at [18].

42. It is well-established that the main purpose of the PTA is to enable prisoners to serve foreign sentences of imprisonment in their own society. The effect of the provisions is that transferred prisoners serve in the receiving State the sentence imposed in the transferring State subject to the receiving State's laws and procedures on the enforcement of sentences, including conditional release: R (Bristow) v SSHD [2013] EWHC 3094 (Admin) (DC) at [2]; Bristow v SSJ [2015] EWCA Civ 117 at [12]; Willcox & Hurford v the United Kingdom (2013) 57 EHRR SE16 (Admissibility) at [91].

Criminal Justice Act 2003

43. Section 273 of the CJA 2003 is the central provision of relevance to this claim. It provides insofar as material as follows:

> "Life prisoners transferred to England and Wales
>
> (1) The Secretary of State must refer the case of any transferred life prisoner to the High Court for the making of one or more relevant orders.
>
> (2) In subsection (1) "transferred life prisoner" means a person-
>
> (a) on whom a court in a country or territory outside the British Islands has imposed one or more sentences of imprisonment or detention for an indeterminate period, and
>
> (b) who has been transferred to England and Wales after the commencement of this section in pursuance of –
>
> (i) an order made by the Secretary of State under section 2 of the Colonial Prisoners Removal Act 1884 (c. 31), or
>
> (ii) a warrant issued by the Secretary of State under the Repatriation of Prisoners Act 1984 (c. 47),
>
> there to serve his sentence or sentences or the remainder of his sentence or sentences"
>
> (3) In subsection (1) "a relevant order" means-
>
> (a) in the case of an offence which appears to the court to be an offence for which, if it had been committed in England and Wales, the sentence would have been fixed by law, an order under subsection (2) or (4) of section 269, and
>
> (b) in any other case, an order under subsection (2) or (4) of section 82A of the Sentencing Act.

> (4) In section 34(1) of the Crime (Sentences) Act 1997 (c. 43) (meaning of "life prisoner" in Chapter 2 of Part 2 of that Act) at the end there is inserted " and includes a transferred life prisoner as defined by section 273 of the Criminal Justice Act 2003
>
> …".

IV. The Construction Ground

44. The Claimant's argument is attractively simple. Leading Counsel for Mr Neville submits that he is a *"transferred life prisoner"* within the definition in s.273(2) of the 2003 Act because the only "sentence" imposed by a "court" in Thailand on him was life imprisonment. He submits that the definition of the term "transferred life prisoner" in s.273(2) is an exhaustive definition in the sense explained by *Bennion on Statutory Interpretation* (8th Edition) at 18.2 and 18.6, which means that the only question is whether the Claimant falls within the definition, construed without regard to the natural meaning of the term defined.

45. It follows, he argues, that Mr Neville is therefore a person "on whom a court... has imposed one or more sentences of imprisonment or detention for an indeterminate period" (s.273(2)(a)). The fact that between the initial life sentence imposed by the Phuket Provincial Court, on 30 November 2011, and his transfer to the UK, on 25 January 2019, the Claimant was the subject of CRPs (which by prerogative action reduced life to punishment for determinate terms) does not on the Claimant's arguments change the fact that he was a person "on whom a court... has imposed one or more sentences of imprisonment or detention for an indeterminate period".

46. It is accepted on the Claimant's behalf that at the point he was transferred to the UK he was subject to a determinate sentence with a fixed release date and was not "in that sense" a life prisoner.

47. In support of his case the Claimant has produced expert evidence on Thai law which he argues establishes that even though the CRPs had changed or modified his punishment from life imprisonment to a determinate sentence, he was still a person upon whom a "sentence of imprisonment" for an indeterminate period had been imposed by a court. He has deployed three expert reports which he submits support his case that although there were court orders which on their face reduced the life sentence to a determinate period (see paras. [18] and [19] above), these were essentially "rubber stamping" exercises which reflected the effect of the Royal Decrees. It is said that they do not represent the exercise of any judicial power. Thus, he was originally, and remains to this day, subject to a sentence of imprisonment for life. The Claimant also relies upon English case law which underlines difference between exercises of judicial authority in imposing criminal penalties and prerogative/executive powers or clemency, remission or commutation of such sentences, such as the power of pardon.

Discussion

48. In considering these attractively presented submissions, we must begin with the interpretation of s.273 of the CJA 2003, as a matter of language and purpose. As is clear

from the definition of "transferred life prisoner" there are two criteria which must be met before a prisoner can fall within this category. First, the person must be one *"on whom a court... has imposed"* an indeterminate sentence (s.273(2)(a)). Second, the person must be someone who *"has been transferred"* to England and Wales pursuant to a RPA warrant to serve "his sentence or sentences, or the remainder of his sentence or sentences" (s.273(2)(b)). Although there are two criteria, in s.273(2)(a) and (b), each of them refers to one or more "sentences". The provision makes sense if the word "sentence" refers to the same thing in each of the places where it appears. To be a "transferred life prisoner" the person must have been sentenced to an indeterminate sentence and transferred to the United Kingdom in order to serve it. This renders the definition concordant with the natural meaning of the term being defined. As the authors of *Bennion* make clear at 18.6, the natural meaning of the defined term is not irrelevant, particularly where there is scope for doubt about what the definition itself means.

49. As Lord Hoffmann explained in MacDonald (Inspector of Taxes) v Dextra Accessories Ltd. [2005] UKHL 47, [2005] 4 All ER 107 at [18]:

> "'… a definition may give the words a meaning different from their ordinary meaning. But that does not mean that the choice of words adopted by Parliament must be wholly ignored. If the terms of the definition are ambiguous, the choice of the term to be defined may throw some light on what they mean."

50. Likewise in Birmingham City Council v Walker [2007] UKHL 22, [2007] 2 AC 262 at [11] Lord Hoffmann observed:

> "Although successor is a defined expression, the ordinary meaning of the word is part of the material which can be used to construe the definition."

51. If it were otherwise, the 2003 Act would require the United Kingdom justice system to treat the transferred person as subject to a life sentence, even though he is not. This would assist the Claimant in this case, because a life sentence in this jurisdiction would allow release long before the end of the determinate sentences to which he is now subject. It would not, however, give effect to the sentence imposed by the transferring state.

52. The terms of s.273(2)(b)(ii) mean that the terms of the warrant are of critical importance. We have set out the warrants above at [29] and [32]: they both clearly refer to transfer being for the Claimant to serve a determinate and not an indeterminate sentence. That in itself would suggest that the Claimant cannot meet the second criterion. On that analysis, the Claimant is assumed to meet the first criterion, because an indeterminate sentence was imposed on him by a court. He does not, however, meet the second criterion because no warrant was issued by the Secretary of State under the 1984 RPA transferring him to serve that indeterminate sentence in the United Kingdom. It seems likely that no such warrant could have been issued because it would require him to serve a different sentence from that which the United Kingdom was required to enforce by the PTA. The power to issue a warrant under the RPA is closely tied to the international arrangements to which it is designed to give effect, in this case the PTA. Whether that is so or not, the warrant which authorised the Claimant's transfer to the

United Kingdom in this case required the Claimant to serve the determinate sentence to which he was subject at the date of transfer. That is enough to dispose of the Construction Ground.

53. However, the Claimant argues that each warrant is incorrect in this respect: he says they should have referred to his "true" sentence which is a life term. That submission takes one back to consider whether the first criterion was satisfied, and we ought to deal with it. In doing so we will address some significant issues concerning the true role of the Defendant in this area, which will provide further support for the conclusion we have already reached, as well as providing our answer to the submissions on the Claimant's principal issues.

The First Criterion

54. As to the first criterion, in the context of the prisoner transfer regime of which s.273 is a part, the natural meaning of the phrase *"a court... has imposed... one or more sentences"* is that the transferred prisoner is subject to a current and ongoing indeterminate sentence, as submitted by the Defendant. In our judgment, this interpretation is consistent with the governing principle of prisoner transfer arrangements, which is that the receiving State is bound to enforce the current sentence imposed by the transferring State (which is given effect in the arrangements between Thailand and the UK in Article 6(2) of the PTA), as opposed to an earlier sentence (historic and superseded) that is no longer applicable in the transferring State.

55. The terms of the PTA, and the practical operation of prisoner transfer arrangements (where more than one sentence for the same offence may have been imposed at different times in the transferring State) requires s.273(2)(a) to be interpreted as referring to the operative sentence *at the point* of transfer. Any other conclusion makes little sense. The transferring and receiving States are concerned with completion of the prisoner's actual and current sentence in the receiving State and not completion of a historic and superseded sentence.

56. Although we will address the more specific arguments of the Claimant below, we can summarise our reasons for rejecting the submission that the only "sentence" imposed by the Thai court was one of life imprisonment briefly as follows:

(1) The uncontroversial factual evidence which we summarised in Section II above establishes that the Thai *"court... has imposed"* a determinate sentence. The three warrants of imprisonment, including the two issued following the first and second CRPs (see [18] and [19]) were issued and signed by judges of the Phuket Province Court (the same court that convicted and sentenced the Claimant) and sent to the Governor of the prisons in which the Claimant was held with instruction as to when he should be released. Those are the instruments identifying the term and authorising detention for the term.

(2) It may be that through the issuance of those warrants of imprisonment, the Thai courts have implemented, on instruction from the executive and legislature, the reductions in sentence in the CRPs and in doing so has imposed a determinate sentence on the Claimant. But those warrants still represent an exercise of judicial power absent which the decrees have no practical legal effect. The

resulting periods of imprisonment are clearly sentences on any normal understanding of that term even if their origin in the constitutional regime of Thailand is an executive act. They were also clearly sentences of a court in the view of Thailand when it agreed to the transfer: it was the service of those sentences which both the UK and Thailand made the subject of the transfer agreement (and which the Claimant himself expressly agreed to).

(3) It is well established that the pardon procedure is an integral part of the Thai sentencing process: see Willcox at [94] per Davis J. Any sentence passed by the Thai court is imposed in the knowledge that it may be reduced by way of Royal Pardon. In other words, the initial sentence imposed by the Thai court is the sentence handed down subject to any future pardons. We note in passing that is also reflected in the definition of "sentence" under Thai Royal Pardons Law to which we were referred in argument (addressed further in para.[63] below). This may perhaps be most easily understood in United Kingdom terms as the way in which prisoners earn credit against their sentences for good behaviour, which has been part of our penal system for many years. The Pardons in this case were collective pardons which applied to all prisoners in particular categories. The actual effect of the pardon on an individual prisoner depended on that prisoner's conduct during the sentence. The better the conduct, the greater the reduction. The prisoner is required to serve the whole of the determinate sentence imposed, or subsequently varied by pardon, and the reductions therefore fulfil the same public policy goal as the early release provisions in United Kingdom sentencing practice.

57. The Claimant relies on the expert Thai law evidence of Professor Harding to argue that the UK is bound by the nature and duration of the sentence in Thailand, which he says remains one of a life sentence. Whether or not Professor Harding is correct, his view and expert foreign law evidence, are ultimately not relevant when the role of the receiving State is properly understood.

58. The starting point is that, in accordance with the definition of a "transferred life prisoner" in s.273(2)(a), the Defendant was required to determine as a matter of fact based on information from the transferring State whether a transferred prisoner is subject to a sentence of indeterminate length. The information that the transferring State must provide is set out in Article 5(3) of the PTA and includes *"*the termination date of the sentence". The effect of the CRPs – whether it is accepted to be a change to the nature of the sentence or characterised as an irrevocable reduction in its enforcement (as contended by Professor Harding)- has the same result: the Claimant is the subject of a sentence of fixed length and therefore he falls outside of the definition in s.273(2).

59. The Defendant is not required (and indeed is not qualified) to determine the legal and constitutional status of the sentence/pardon/commutation as a matter of Thai law. That is a matter to be determined by the Thai authorities pursuant to Article 6(2) of the PTA. The Claimant is therefore wrong to submit that the legal effect of the CRPs is to be determined by the High Court applying Thai law to the facts of the Claimant's case. Both the Defendant and the Court must apply the domestic provisions in s.273 to the information received from the transferring State about the sentence.

60. Under the terms of the PTA it is for the Thai authorities to determine the "legal nature and duration" of the sentence and for the UK to enforce the sentence, insofar as

possible, to "correspond with the sentence imposed in" Thailand (see Article 6(2) and (3) of the PTA). In our judgment, the Defendant rightly concluded, based on information from the Thai authorities, provided in accordance with Article 5(3) of the PTA at the point of transfer, that the Claimant was at the point of repatriation, and remains, the subject of a determinate sentence in Thailand.

61. Although we do not need to rely upon it in support of our conclusions, Thailand has confirmed that view in response to the claim. The Defendant provided the Thai authorities with the report of Professor Harding. By letter from the Thai Ministry of Foreign Affairs dated 1 October 2020, the Deputy Director-General, acting on behalf of the Director-General of the Department of Corrections, Penology Bureau, Foreign Affairs Sub-Bureau provided a response dated 29 September 2020. The response confirms that the reduction in sentence following a CRP is imposed by a court through the issuance of a warrant of imprisonment and represents a penalty imposed by a court. We have not overlooked the submission of the Claimant that this response is said to be inadmissible expert evidence. We reject that objection because the response is not advanced as expert evidence, but as confirmation that the transferring State, which, pursuant to Article 1(a) of the PTA is the Government of the Kingdom of Thailand, has determined in accordance with Article 6(2) of the PTA that the nature and duration of the sentence is of a fixed length and is therefore determinate in nature. Under Article 6(2) of PTA, it is the determination of the Government of Thailand as to the nature and length of the sentence that is paramount. The PTA does not permit the Defendant (or this Court) in the receiving State nor an independent expert to determine the issue following transfer. The evidence, therefore, relates to an important matter of fact namely the nature and duration of the sentence as determined by the transferring State.

62. Not only does the PTA specifically provide that the view of the transferring State as to the nature and length of the sentence is paramount, but it also provides that the transferring state "retains exclusive jurisdiction regarding the judgments of its courts, the sentences imposed by them and any procedures for revision or cancellation of those judgments and sentences" (Article 5). It would undermine those arrangements for the receiving State (including its courts) to come to a contrary conclusion to the transferring State at the behest of a transferred prisoner. That is a person who requested, and irrevocably consented to, his transfer on the understanding that he would be subject to the determinate sentence on a basis that he now contends is wrong.

63. Although not necessary for our conclusions, we would add that the Claimant has not, in any event, proved the distinction in Thai law that underpins his claim. The burden is on the Claimant to prove the meaning of the foreign law on which he relies. In order to establish the proposition that the Claimant remains the subject of a life sentence, Professor Harding seeks to draw a distinction between sentences and punishments. However, the only statutory definition of a "sentence", which, significantly, is found in the legislation enacting the Royal Pardons to which the Claimant is subject, is drawn broadly to include: "...sentences provided in a judgment and in the punishment warrant when the case is final; or sentences according to a legitimate order to punish; or the said sentences which are lessened by being granted pardons or by other reasons."· This definition appears in a Royal Decree issued by the King pursuant to the Thai Criminal Code and Constitution (an instrument which would seem to be like a UK statutory instrument). On a plain reading (and as confirmed by the Government of Thailand in its response to the claim) the statutory definition of a sentence incorporates warrants of

imprisonment sent by a court to a prison and sentences reduced by pardons. In other words, the Claimant's sentence was changed to a determinate one in Thailand through the CRPs as imposed by the Thai sentencing court. This definition is clearly unhelpful to the Claimant's main argument. We found Professor Harding's explanation of the wording of the Royal Decree as being "not satisfactorily drafted", unconvincing. It seems plain that under the only actual Thai legal provisions cited, a life sentence modified by decree to a determinate term remains a "sentence". This point is however not a determinative one and the claim fails under the first criterion for the independent reasons we have set out above.

The Second Criterion

64. The second criterion (that the person *"has been transferred"* to the UK "*to serve"* the indeterminate sentence) underlines in our judgment the fact that it is at the point of repatriation and by reference to the statutory warrant that the Defendant is required to consider whether the case should be transferred to the High Court in accordance with s.273(1). The first warrant makes it plain (and is correct in this respect) that it is requiring the transfer of the Claimant to serve a determinate sentence: see [29] above. The second warrant correctly records the history and adjusts the term of the determinate sentence giving effect to a CRP, see [32] above. The second criterion is not met.

65. In our judgment, the Defendant was right to conclude that the Claimant is not a *"life transferred prisoner*" within s.273(1). He cannot satisfy the first or the second criterions.

V. Convention Rights

66. We have concluded that on the facts of this case, and upon the construction s.273 of the CJA 2003 according to its plain language (and within the scheme of the PTA) the Claimant is not a "transferred life prisoner" within the meaning of that subsection.

67. The Claimant contends that if this is the result, his continued detention is arbitrary because the CRPs have put him in a worse position than he would been had he not received them. In point of fact, that may well be right and has indeed been recognised by the Strasbourg Court as we identify below.

68. He argues that this outcome leads to a breach of his Convention rights (Article 5, Article 6 and Article 14 read together with Article 5). Accordingly, he contends that under section 3 of the Human Rights Act 1988 ("HRA 1998") , it is necessary to read s.273 of the CJA 2003 in such a way as to avoid this breach.

69. Having been refused permission to make these points as freestanding claimed HRA 1998 breaches, the Claimant makes essentially the same arguments through the "backdoor" route of the section 3 HRA 1998 interpretive obligation on the court. These submissions were not developed orally but we will seek as briefly as possible to deal with the substance of the points made in writing.

70. May J considered each of the Convention arguments to be unarguable. We agree.

Article 5 ECHR

71. Insofar as material, Article 5 ECHR provides:

> "Right to liberty and security
>
> 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> the lawful detention of a person after conviction by a competent court
>
> …
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

72. At a high level of generality, to come within Article 5(1)(a) ECHR, lawful detention must result from, follow and depend upon, or occur, by virtue of a conviction. In practice, all this means is that there must be a sufficient *causal connection* between the conviction and the deprivation of liberty in issue: Weeks v the United Kingdom (1988) 10 EHRR 293 at [42]. However, detention may still be unlawful, notwithstanding the necessary causal connection between the conviction and sentence, if there exists bad faith or deception on the part of the authorities or there are other indications of arbitrariness as a result of the complaint made: James, Well and Lee v the United Kingdom (2013) 56 EHRR 12 at [191-195].

73. Article 5(1)(a) has been given detailed consideration by a number of courts in the context of prisoner transfer arrangements and three relevant principles emerge from the authorities:

(1) The Convention must be interpreted so far as possible in harmony with other rules of international law of which it forms part, including the general context of prisoner transfers and the terms of prisoner transfer agreements applicable in specific cases: Willcox & Hurford v the United Kingdom (2013) 57 EHRR SE16 (Admissibility) at [85]; Veermäe v Finland (2005), App No 38704/03 (Admissibility) at [pp.13-14]; and Ciok v Poland (2012), App No 498/10 (Admissibility) at [24].

(2) Where a person is serving a sentence of imprisonment following prisoner transfer the necessary causal connection between the conviction in the transferring State and the deprivation of liberty in the receiving State is established: Willcox & Hurford at [83].

(3) Detention will not be arbitrary (even in circumstances where the person does not consent to transfer) where, as a result of the interaction of the sentencing law of the transferring State and the rules on release in the receiving State, the transfer of a person results in them serving a longer *de facto* term of imprisonment in the receiving State as long as the sentence to be served does not exceed the sentence imposed in the criminal proceedings in the transferring State: Willcox & Hurford at [91-92]; and Veermäe at [pp.13-14] cited with approval in R v Hull [2011] EWCA Crim 1261 at [49]. This is vividly illustrated by the Ciok case where the prisoner was convicted and sentenced to life in Belgium where he would be eligible for early release after serving 10 years' imprisonment. He objected to his transfer to Poland where he could apply for release after 25 years' imprisonment [21]. The Strasbourg Court explained that to lay down a strict requirement that the sentence served in the receiving State should not exceed the sentence that would have to be served in the transferring State would thwart the current trend towards strengthening international cooperation in the administration of justice, a trend which is in principle in the interests of the persons concerned [24].

74. Given their parallels to the case before us, the decisions of the Administrative Court in Willcox and then the Strasbourg Court in Willcox & Hurford (when Mr Willcox took his complaints to that Court) need to be considered more detail. The facts of Willcox were very similar to the Claimant's case. The prisoner had pleaded guilty to drug offences committed in Thailand. He was sentenced in Thailand to a determinate sentence of 33 years and 6 months' imprisonment which was reduced by two weeks following a Royal amnesty. On his application, he was transferred to the UK. Following his transfer, a CRP was issued which led to a further reduction in his sentence to 29 years and 3 months. By way of judicial review proceedings, the prisoner challenged the warrant issued by the Defendant on the grounds that the continued enforcement of the sentence breached Articles 3 and 5 ECHR.

75. In support of his Article 5 ECHR claim, the prisoner argued that his detention was arbitrary because had he chosen to plead not guilty and had he been convicted after trial he would have received a life sentence and, on transfer, the Defendant would have been bound to refer his case to the High Court under s.273(1) of the CJA 2003 for a minimum term to be set, which he submitted would have resulted in his immediate release.

76. This argument was rejected. Ouseley J held there was *"nothing"* in the Article 5 ECHR argument on the basis that a life sentence is, in principle, a more severe sentence than a determinate sentence in view of its continuing impact on release and the prospect of a return to custody; that the difference in outcome was not the result of arbitrary action by the Thai Court but of the application of Thai law to his plea, then interfacing with UK sentencing practice on transfer; nor was the enforcement of that sentence arbitrary once it was established that the conviction and sentence are those of a court. Ouseley J noted that the claimant's contention was "in reality an argument for the general conversion of sentences based on an inapt comparison with the different way in which life sentence minimum term and release provisions apply": [54]-[55].

77. This reasoning was essentially adopted by the Strasbourg Court in Willcox & Hurford when Mr Willcox's case reached that tribunal. It explained at [90]:

> "…it is not accurate to compare the tariff period under a life sentence with the term of a determinate sentence... In particular, a life sentence entails obligations and restrictions which extend beyond the mere period spent in detention, both in the form of parole conditions and the risk of being returned to custody in the case of a breach of those conditions. These restrictions make a life sentence the more stringent sentence in principle."

78. The Strasbourg Court also rejected the applicants' "arbitrary outcome" submission in a way which is fatal to the Claimant's Article 5 argument. It explained at [91]:

> "The Court accepts that there may be differences in outcome for prisoners who have been transferred from the State in which they were sentenced to serve their sentences elsewhere. It has previously found that detention was not arbitrary where, as a result of the interaction of the sentencing law of the transferring State and the rules on early release in the receiving State, the transfer of a prisoner resulted in a longer *de facto* term of imprisonment being served (see *Veermäe*, cited above; *Csoszánszki*, cited above; *Ciok v. Poland* (dec.), no. 498/10, § 26, 23 October 2012; and *Giza v. Poland* (dec.), no. 1997/11, § 23, 23 October 2012). In the present case it seems likely that had life sentences been imposed on the applicants in Thailand and not been converted to determinate sentences by royal amnesty prior to their transfers, the applicants would have benefited from a significantly reduced period of detention after transfer to the United Kingdom because the High Court would have fixed a relatively short minimum term (see paragraph 17 above). However, the difference in outcome does not arise from the arbitrary application of different rules to different prisoners. Clear rules, set out in the applicable prisoner-transfer agreement, the 1984 Act and the Criminal Justice Act 2003, are applied in prisoner-transfer cases, and were applied in the applicants' cases. That different outcomes may occur is the result of the interaction between the law of the transferring State on sentencing and the practice of the receiving State on transfer. Such differences are inherent in any prisoner-transfer arrangements, which are essentially based on the principle that the sentence imposed by the transferring State will be enforced by the receiving State. The Court reiterates that the applicants consented to their transfers, in the knowledge of what that entailed in terms of the time they would be required to serve in detention, doubtless to enjoy the many benefits attached to the enforcement of their sentences in the United Kingdom, including more favourable rules on early release and better conditions of detention."

79. Based upon our summary of the domestic and Strasbourg jurisprudence, we reject the submission that it is necessary to read s.273 of the CJA 2003 in such a way as to avoid a breach of the Claimant's Convention rights. The Claimant's continuing detention is lawful and no arguable breach of Article 5 ECHR arises. There is no question that the

necessary causal connection exists between the Claimant's convictions in Thailand and his detention in the UK pursuant to the terms of the PTA. It is not arbitrary to continue to enforce the sentence nor is it necessary to read s.273(1) so that the Claimant can be treated as a transferred life prisoner. The Claimant must serve a determinate sentence because it corresponds with the sentence to which he is subject in Thailand.

80. It is clear that the perception of unfairness on the part of the Claimant arises not from the result of any arbitrary application of the law or procedure to him, but because, if he were a life sentenced prisoner, which he is not, he would be subject to a life sentence with a minimum tariff in England and Wales. For him, the features of a life sentence which make it, in principle, a more severe sentence than determinate sentences are not important. He would have a good prospect of parole at the end of his minimum term. He, no doubt, regards the risk of recall as low, and would happily agree to the imposition of licence terms to secure his freedom. He is simply not the kind of offender for whom United Kingdom life sentences are designed, and he is confident that their features which are designed to protect the public would not cause him any difficulty. It seems odd to describe a life sentence in the United Kingdom system as a more severe sentence that a Thai determinate sentence of 50 years which must be served in full, subject to any Pardons (which was the first determinate sentence imposed on him following the first relevant Pardon). However, it is not odd to describe that 50 year term as less severe than the whole life tariff life sentence which it replaced. The reason why the Claimant is serving a very long sentence of imprisonment is that he chose to commit his offences in Thailand and has received a sentence imposed and administered in accordance with the law of that country. The interface between two very different sentencing regimes which arises, in this case, because the United Kingdom has entered into treaty obligations designed to improve the conditions in which its nationals sentenced in Thailand serve their sentences, is unlikely to produce results which accord in all cases with United Kingdom sentencing practice.

81. We would add that we also consider it significant that the Claimant gave informed consent to his transfer on the understanding that he was to be treated as subject to a determinate sentence and that he would be released at the halfway point of the balance of his sentence. As noted above, the Strasbourg Court considers consent is a relevant factor in the assessment of arbitrariness. However, we note that it has refused to find arbitrariness in factual circumstances far more favourable to the applicants than the Claimant's position, including in cases where the person does <u>not</u> agree to the transfer.

<u>Article 6</u>

82. As we understood the Article 6 argument it is limited to a contention that the inability of the Claimant to participate in the process which led to the King making the CRPs which had the effect of changing his life sentence into a determinate period (or periods) of imprisonment (with the consequential effect on his ability to claim he is a "transferred life prisoner within s.273) amounted to a breach of his Article 6 rights. It was not explained how this would feed into any interpretation of s.273 but we will deal with the argument on its merits.

83. The material legal principles are as follows:

(1) Article 6(1) is applicable throughout the entirety of proceedings for the determination of any *"criminal charge"*, including the determination of the sentence: see Eckle v Germany (1982) 5 EHRR 1 at [76-77] and Dementyev v. Russia (2013), App no. 43095/05 at [23].

(2) However, Article 6(1) is not applicable to proceedings for bringing an initial sentence into conformity with the more favourable provisions of new legislation or to purely mathematical exercises that entail no margin of discretion on the part of the judge in the determination of the level of the sentence: see, for example, Eckle v Germany at [77].

(3) Similarly, proceedings concerning the execution of sentences such as proceedings for the application of an amnesty and prisoner transfer proceedings do not fall within the ambit of Article 6(1): see, respectively, Montcornet de Caumont v France (2003), App No 592900/00 and Szabó v Sweden (2006), App No 28578/03, (Admissibility) at [pp.11-12].

(4) If a conviction is the result of proceedings which were a *"flagrant denial of justice"*, that is, which were manifestly contrary to the provisions of Article 6 or the principles embodied therein, the resulting detention would not be justified under Article 5(1)(a). The breach must go beyond procedural irregularities or lack of procedural safeguards, which might result in a breach of Article 6(1) if it occurred in the Contracting State. It must be so fundamental that it amounts to the nullification or destruction of the very essence of the rights guaranteed by Article 6 ECHR.

84. We reject the Article 6(1) complaint because (however the "change" in the Claimant's sentence is characterised) the Claimant cannot rely on his Article 6(1) rights in relation to the application of the CRPs to his sentence. That is because Article 6(1) does not apply to either amnesty procedures or proceedings that serve only to reduce sentences and which are conducted by way of mathematical exercise.

85. However, even if that process amounted to a breach of Article 6(1), we would need to determine whether the Claimant suffered a *"flagrant denial of justice"*. The proceedings in Thailand must be examined as a whole (as was the approach of the Strasbourg Court in Willcox & Hurford at [97]). As we understand it, the CRP procedure is the Claimant's sole criticism of the Thai proceedings. He makes no complaint about the fairness of his trial, appeal against conviction or the initial sentencing process. That is unsurprising: the Claimant was represented at his public trial and sentence before two independent judges who provided a reasoned, detailed judgment examining the strong evidence of his guilt. Set against that background, his complaint about a procedure, the effect of which reduced, and continues to reduce, his sentence in Thailand falls far short of the high threshold for finding a flagrant denial of justice.

86. It is also a material factor in the assessment of the overall fairness of the Thai processes that the Claimant did not raise any concerns about the impact of the CRPs on his sentence before he was transferred. It also appears, according to Professor Harding and the formal Thai Government response, that the Thai Supreme Administrative Court has taken the view – contrary to Professor Harding's own view – that it has jurisdiction to review royal decrees on pardons. If correct, this right of review is another factor that

demonstrates that the overall proceedings in Thailand have been fair. It also demonstrates that the Claimant has an alternative remedy to judicial review, which is to challenge the operation of the pardons on his sentence in Thailand, not in the UK.

87. We reject the Article 6 complaint. Nothing in the arguments on this provision requires an interpretation of s.273(1) which differs from its ordinary meaning.

Article 5 read together with 14 ECHR

88. The Claimant argues that he is the victim of discrimination when compared to what he says is the analogous situation of a repatriated life sentenced prisoner who would have following arrival had his case referred to the High Court for a tariff to be set. This argument is deployed in support of his submission that under section 3 of the HRA 1998 the Court should reject the construction which follows from the language of s.273 of the CJA 2003.

89. Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

90. A complaint of discrimination under Article 14 requires four elements to be established (R (Stott) v Secretary of State for Justice [2020] AC 51 at [8]):

(1) Does the subject matter of the complaint fall within the ambit of one of the substantive Convention rights?

(2) Was the difference in treatment on the ground of one of the listed characteristics in Article 14, or 'other status'?

(3) Were the claimant and the person who has been treated differently in analogous situations?

(4) Was there objective justification for the difference in treatment? Different treatment will be objectively justified if it pursues a legitimate aim and the means employed bear *"a reasonable relationship of proportionality"* to the aims sought to be realised.

91. It is common ground that elements (1) and (2) are established. In particular, the Defendant is right to concede that (following the decision in Stott) the Claimant's status as a prisoner repatriated from Thailand and subject to a determinate sentence is capable in principle of amounting to an *"acquired personal status"* amounting to *"other status"* for the purposes of Article 14 ECHR.

92. We however agree with the Defendant that as regards element (3), the Claimant is not in an analogous situation to a repatriated life-sentenced prisoner. That is because he was not at the point he was repatriated (or thereafter) subject to a sentence of life

imprisonment. The jurisprudence of the Strasbourg Court makes clear that for the purposes of Article 14 ECHR, life sentenced prisoners cannot be compared to other prisoners because, given the nature of a life sentence, prisoners cannot claim to be in *"an analogous or relatively similar situation"* to other prisoners not serving life sentences: Kafkaris v Cyprus (2009) 49 EHHR 35 (Grand Chamber) at [162-166].

93. Element (4) is also not satisfied. The Claimant has not been subjected by the Defendant to different treatment as compared to any other repatriated prisoner from Thailand. The same rules have been applied to him. Any difference in treatment is in any event objectively justified. It pursues the legitimate aims, identified in the PTA, of social rehabilitation for nationals detained abroad and respect for the sentence imposed in the foreign jurisdiction; and the means employed to achieve those aims are proportionate: see Veermäe v Finland (2005), App no 38704/03 (Admissibility) at [pp.13-14].

94. It is important in our judgment to exercise caution in this field: if the Claimant was treated any differently it would undermine the prisoner transfer arrangements with Thailand (and other jurisdictions), which would be less likely to consent to transfer requests, to the detriment of British nationals detained overseas. We refer to the observations of Davis J in Willcox at [87], which we respectfully endorse. The different potential outcomes for prisoners are a result of differences inherent in prisoner transfer arrangements and the interaction of the sentencing law of Thailand and the law on the enforcement of sentences in the UK. Had the Claimant not been transferred he would serve a far longer sentence in Thailand, because he is entitled to the benefit a reduction of half the term remaining at the date of transfer (which he will receive in addition to the benefit of any further CRPs which may be issued in Thailand during his sentence). If had not been transferred, he would be only entitled to the benefit of the CRPs.

95. For these reasons, we reject the submission s.273 requires a modified interpretation in accordance with s.3 HRA 1998 in order to avoid claimed breach of the Claimant's Article 14 ECHR rights. There is no breach.

V. Conclusion

96. The claim for judicial review is dismissed.