



Neutral Citation Number: [2024] EWHC 1954 (Admin)

Case No: AC-2022-LON-003642

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 30/07/2024

**Before :**

**MR JUSTICE JULIAN KNOWLES**

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**Between :**

**HANS KACERRI**  
**- and -**  
**GOVERNMENT OF ALBANIA**

**Appellant**

**Respondent**

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**Mary Westcott** (instructed by **Hollingsworth Edwards Solicitors**) for the **Appellant**  
**Amanda Bostock** (instructed by **CPS** ) for the **Respondent**

Hearing dates: 11 June 2024  
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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 30 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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## Mr Justice Julian Knowles:

### Introduction

1. This is an appeal with the permission of Sir Duncan Ouseley sitting as a High Court judge against the decision of District Judge Zani on 5 December 2022 to send the Appellant's case to the Secretary of State, who subsequently ordered his extradition.
2. The single ground of appeal is that the Appellant's extradition would be incompatible with Article 8 of the European Convention on Human Rights (ECHR) and so barred by s 87 of the Extradition Act 2003 (EA 2003).
3. The Respondent submitted a request for the Appellant's extradition on 31 May 2021. The request was certified under s 70 of the EA 2003 by the Secretary of State on 17 June 2021 and is governed by the provisions of Part 2 of the EA 2003; the Extradition Act 2003 (Commencement and Savings) Order 2003 (SI 2003/3103; and the Extradition Act 2003 (Designation of Part 2 Territories) Order 2003 (SI 2003/3334), by virtue of which Albania is not required to prove a *prima facie* case.
4. The Albanian domestic warrant for the Appellant's arrest was issued on 13 April 2018, very shortly after the alleged offending behaviour was discovered.
5. The Appellant was convicted *in absentia* on 12 September 2019 and sentenced to 12 months' imprisonment. The prosecution appealed the sentence on 20 September 2019 (alongside the acquittal of a co-defendant), and the appeal remains in process (so far as I am aware).
6. In summary, the Appellant was convicted of being involved with others in the supply of illegal drugs at a late night coffee bar.
7. Further information from Albania dated 2 September 2022 alleged the following: (a) the Appellant was announced as wanted from 2 February 2018, but the police could not locate him as he 'deliberately (intentionally) avoided confrontation with justice authorities'; (b) an order was made for his remand in custody on 13 April 2018 but was ineffective for the same reason; (c) the case was conducted *in absentia* because the Appellant could not be located and was known to be hiding. He was defended by a named lawyer 'elected by special power of attorney from the subject himself'; (d) the Appellant was involved in the transportation, storage and distribution of cocaine and heroin. Surveillance reports document that he talked with customers and, in addition to drinks, he offered plates with divided doses of narcotic substances; (e) on 2 February 2018 accomplices were arrested and over two kilos of cocaine was seized worth around €73,000; (f) the Appellant's phone was still under surveillance at the time of his accomplices' arrest, and it can be proved that he was aware of their arrest and immediately took measures to escape, asking family members to collect his belongings and whether anyone had been to the house yet; (g) the Appellant's lawyer appealed his conviction, but the conviction was upheld on 19 March 2021.
8. Paragraphs 6 and 7 of the Further Information stated:

“6. Finally, with Decision No. 1520, dated 12.09.2019 of the Judicial District Court of Shkodra, he was found guilty

of committing the criminal offense of ‘Adaptation of bar for drug use’ (committed in collaboration), provided by article 285/a-25 of the Criminal Code, and his sentence of 1 (one) year imprisonment. Against this decision, an appeal was filed by the defendant Hans Kacerri (through the lawyer chosen by him with a special power of attorney). With Decision No. 78, dated 19.03.2021, the Court of Appeal of Shkodra decided to leave in force the decision of the Court of First Instance of Shkodra.

7. The subject has the right to submit a request with the object ‘Review of the decision’, based on article 499 and 451 of the Code of Criminal Procedure. Specifically, the criminal procedural law provides that the review of the decision that has become final is allowed at any time, that is when the sentence has been executed or lapsed.”

### **The decision of the District Judge**

9. At [2] of his judgment the District Judge referred to the maximum sentence for the Appellant’s offence being 15 years. Ms Westcott challenged this, and said that the maximum sentence for the offence under Article 285 of which the Appellant was convicted is five years. Ms Westcott is correct: the relevant provision of the Code is in the bundle, and it does specify a five year maximum sentence.
10. The judge then went through the formalities of the EA 2003, which I need not set out.
11. He then set out parts of the Appellant’s witness statement. This included evidence about his wife’s mental health problems and her attempts at suicide. I will return to these later. I will refer to the Appellant’s wife as AD.
12. At [28] the judge said he did not find the Appellant to be a totally credible witness. He said he had tailored his evidence in order to bolster his case. At [29] the judge set out those aspects of the Appellant’s evidence which he did not believe. Importantly, these did not include his evidence about his wife’s mental health and suicide attempt.
13. At [30] the judge summarised the evidence of a clinical psychologist called on behalf of the Appellant, Dr Laura Gallardo. She carried out an assessment of AD on 22 August 2022.
14. AD gave Dr Gallardo the following account about what had happened to her when she was still a teenager (report, [6.11]-[6.14]):

“6.11 When [AD] was 17 years old, she reported that she met a man in a café in Tirana when she was out with her sister and he gave her his number. He lived in Italy and she remained in contact with him via text messages from her friend’s phone. In December 2015, [AD’s] aunt invited [AD] to spend Christmas with her in Italy. Initially her father was reluctant, but her aunt was able to convince him to let her go. When she arrived in Italy, her aunt gave her a

mobile phone so that they could stay in contact. [AD] used the mobile to contact the man she had met in Albania and arranged to meet him. When she met up with the man, she drank alcohol for the first time. She reported that she got very drunk and thought that she may have also been drugged. This man then abducted her and trafficked her.

6.12 [AD] reported that she was forced to have sex with multiple men. She said that she was repeatedly drugged (injected via her hands) so that she would be compliant. She did not know what substance they were using. There were no visible marks on her hands at the time of interview. She reported that there were other girls in the facility of varying nationalities. Initially they remained in one location in Italy, but following an altercation in which a man who had come to have sex with [AD], realised how young she was and confronted the man leading the operation. After this, she described that they moved around more frequently. She believed they went to Spain next, but she was unsure if they went to other countries as well as it was hard to get her bearings.

6.13 [AD] managed to escape from the house where she was being detained. She said that one day the captors forgot to administer her drugs prior to the cleaner coming in. [AD] saw this as her chance to escape. When the cleaner entered her room, she pushed her and managed to climb out a window. She then ran until she came across a train station, where someone let her use their phone and she contacted her cousin in Italy via social media, who came to collect her.

6.14 [AD] said that she was unable to return to her family as her father believed that she had brought shame onto the family. As her aunt felt [AD] would not be safe in Italy, where she was originally abducted, she gave her 300 euro to buy fake documents to try and enter the UK. [AD] was apprehended by Spanish authorities. Supported by her aunt again, she then entered the UK via lorry.

...

6.23 [AD] said Mr Kacerri as very supportive. She described that he has been one of the few people she has been able to share details of her traumatic experiences with and that he has been very understanding of her mental health needs. She described how he encourages her to get out of the house regularly, and supports her with household tasks when she is feeling low. When asked to describe Mr Kacerri in three words, she said he was supportive, respectful and sensitive.

6.24 [AD] said they sometimes fight, but that this is often instigated by her. She reported that when she gets sad or anxious about the future, she can become more irritable and shout at him. She reported no violence in the relationship. ”

15. Dr Gallardo was able to rule out any exaggeration by AD because she had been selective in her answers to Dr Gallardo during her assessment. Dr Gallardo also noted scars on AD’s arms, which she said were consistent with her reported history of self-harm.
16. AD gave evidence, and the judge summarised this at [31]. In summary, she recounted what she had told Dr Gallardo, namely that she had been trafficked as a prostitute from Albania to other countries in Europe. AD suffers from mental health problems as a consequence. At the time of giving her evidence she was having ongoing treatment from a psychotherapist.
17. As recorded by the judge, AD said (judgment, [31]):

“I cannot return to Albania because of problems I have there. I was trafficked as a prostitute from Albania to other countries in Europe. My life was threatened and that is a continuing threat if I were to leave the United Kingdom. I would not be able to return under any circumstances to Albania.

I met Hans my husband when I was in Albania through mutual friends. We were no more than acquaintances there. We became partners around two years ago in England and moved in together in October 2021.

For those early years in UK I lived with my cousin in Ashford. He is married with children — two daughters and a son. His family were the only people I could trust.

I was not able to leave my room for around a year and half between 2016 to 2018. I suffered nightmares, panic attacks, and was terrified to leave the house. I have been threatened in so many ways, such that I felt that I was being watched and hunted down. I still occasionally have panic attacks. I do not have these feelings when Hans is around. Since I met Hans, he has become my support.

The only person I could speak to about my situation was my cousin before meeting Hans.

I underwent psychological treatment with a psychotherapist and I continue to receive treatment with him. I have had eight face-to-face sessions with a therapist called Sean and have tried sessions on the phone. The treatment was suspended during the corona virus lockdown. I did not feel comfortable to talk about these feelings over the phone. Sean has offered me further sessions face-to-face when I am

ready for it. I find it very distressing to talk about these experiences, so I avoid talking about it. The counselling came through Migrant Relief, a charity for refugees.”

18. The judge turned to the Appellant’s Article 8 challenge at [56].
19. He directed himself on the law correctly by reference to the well-known case law on Article 8. He then listed the factors for and against extradition, as required by *Celinski v Polish Judicial Authorities* [2016] 1 WLR 551. He said at [69(vi)] that one of the factors against extradition was:

“(vi) [The Appellant] remains very concerned about the effects of extradition not only for himself as he has concerns for his own welfare were he to return to Albania, but also for his wife who would suffer very considerably, emotionally and psychologically were he to have to return there.”

20. He said at [70]:

“(70) The core of the closing submissions in respect of the Article 8 challenge can be summarized below :

(i) The heart of this challenge is the anticipated impact upon Mr Kacerri’s wife, [AD]. She is aged 24 and came to the UK in 2016. Her evidence is that she was abducted, held captive and raped on multiple occasions at the age of 17.

(ii) Dr Gallardo’s report portrays [AD] as a woman who has suffered appalling harm at the hands of violent traffickers; information provided to Dr Gallardo by [AD] was that this comprised being drugged and abducted in Italy by an Albanian man and forced into sex work, whereby she was repeatedly raped and drugged by her captors and paying customers for months. [AD] was later able to escape and make her way to the UK.

(iii) In summary, Dr Gallardo found that Mr Kacerri’s extradition would cause [AD] ‘serious psychological harm and the results could be devastating.’ She meets the diagnostic criteria for PTSD, severe depression and anxiety; her mental health conditions have a ‘severe impact’ on her level of functioning such that she cannot leave the house alone or work and struggles to form trusting relationships. She continues to experience periodic panic attacks and when she does, she cannot leave the house alone.

(iv) Dr Gallardo noted [AD] report of 2 previous suicide attempts and expressed the view that, as Mr Kacerri is her main form of support, there is a high probability that if he

is extradited she would attempt suicide again. The oral evidence of Dr Gallardo confirmed much of the foregoing.”

21. At [76] the judge gave his reasons for holding that extradition would not be a disproportionate interference with the rights of the Appellant and/or AD. He said at [76(iv)] onwards:

“(iv) It is appreciated that there will be hardship caused to Mr Kacerri and to his wife. However, that of itself is not sufficient to prevent an order for extradition from being made.

...

(vi) I wish to make clear that I accept that extradition will be difficult for [AD] to deal with. I do not underestimate the issues with which she will have to cope. I have also taken into account not only the contents of the report prepared by Dr Gallardo but also her oral testimony. However, in weighing those concerns, in an Article 8 context, it is important to note the following regarding [AD]:

(a) she has fixed rented accommodation (thought to be in her own name) where she has lived for just over a year – initially with a cousin, thereafter with Mr Kacerri.

(b) She is in receipt of UK State benefits, which enable her to support not only herself (with some further financial assistance from her and Mr Kacerri`s family members who contribute to the payment of part of her rent) but also Mr Kacerri (as his immigration status is such that he is not permitted to work).

(c) She has accessed help with her mental health issues by way of having arranged several sessions of psychological treatment from a psychologist. In her proof she added that ` I continue to receive treatment with him` and that the therapist has offered more sessions face to face (as opposed to on the telephone) as an when she is ready, acknowledging that she finds it very distressing to talk about the (earlier) experiences.

(d) she has been able to visit her cousin`s wife in Ashford on a (more or less) weekly basis (` whenever she says that she needs me`); a journey that she is able to undertake without her husband as he has not been accompanying her. Another cousin accompanies her.

(e) it is not said that either of the incidents of self-harm necessitated her attending hospital for any treatment.

(f) Dr Gallardo reports that she has encouraged [AD] to speak to Migrant Care (who had put her in touch with the therapist referred to above) or her GP.

(g) [AD] has accessed her medical practitioner on a regular basis and she has been prescribed anti-depression medication since 2019. From the records supplied, this medication has remained constant throughout (and is ongoing to date)

(h): (1) The extent of her own family network is unclear as this was not told to the court.

(2) Prior to moving to her present accommodation, it is known that she had been living with a cousin, his family and their children in Ashford, Kent until his arrest and remand in October 2021 whereafter he was sentenced to a term of imprisonment in relation to criminal acts of child cruelty in respect of his 2 eldest children. These children are said now to be in care and this cousin is thought to have been released during the course of this month. It is believed to be the cousin in whom [AD] was able to confide in regarding her mental health issues.

(3) It is not known whether she will be able to return to live with that cousin, albeit she expressed reluctance by reason of the earlier activity of the police at that address. No statement from that cousin (or his wife) has been filed.

(4) As mentioned [AD] also made reference to assistance being received regularly from another cousin who brings her to the home of the other other cousin`s wife (believed to be in Ashford) for [AD] to help when needed.

(4) When asked Mr Kacerri said that the £1k cash security had been lodged by `a cousin`, albeit the court records states that the payer was, in fact, [AD] (she may, of course have obtained the money from family).

(5) It was suggested to her in evidence that there were family members who could assist her (with care) were extradition to be ordered she replied that `I don`t know`.

(6) Mr Kacerri has said that he has 7 or 8 cousins as well as his sister who live nearby (his sister being 10 minutes away) and that they all get on well with [AD]. Some are providing financial assistance and albeit Mr Kacerri said that he did not know if this support would continue if he were to be extradited, no statement from any such family member has



been filed (to say that, for example they would stop this support). This court's experience is that very often family members gather round to offer support rather than abandon a family member in need.

(7) [AD] has leave to remain until 2026 and she will be entitled to apply for permanent residency and UK citizenship. It will be a matter for the Home Office to then consider her application and it is not for this court to speculate as to whether her application to remain will succeed or fail. Mr Kacerri's application for asylum is currently pending."

22. Importantly, he did not reject any aspect of the evidence AD or Dr Gallardo had given.

### **Submissions**

#### *The Appellant's submissions*

23. On behalf of the Appellant, Ms Westcott submitted as follows.
24. The Appellant's situation has moved on since the District Judge's decision, in that AD is now pregnant with a due date in September 2024. AD signed a further statement on 20 May 2024 with proof of her pregnancy. In her Skeleton Argument, Ms Westcott invited me to 'take judicial notice of the sea change their child's birth will represent and the huge extra challenge that would mean for somebody in AD's circumstances, largely isolated' (at [8]).
25. Ms Westcott invited me to re-take the Article 8 balancing exercise myself in light of the facts as they now are. I will come back to this later. But she said the judge had been wrong in his Article 8 determination even on the evidence which was before him. Ms Bostock did not object to my receiving updating evidence about AD's condition.
26. She emphasized the relatively minor nature of the Appellant's offending, certainly as compared with his co-accused, who got longer sentences. She said the judge had overestimated the seriousness of the Appellant's offending, as demonstrated by his misstatement of the maximum sentence (which I dealt with earlier).
27. Ms Westcott's main point, however, was that the District Judge was wrong in the treatment of the impact the Appellant's extradition would have on AD.
28. Without the Appellant, AD would have limited support by virtue of her serious and chronically poor mental health. For AD, the safety and security the Appellant offers is crucial. There was no suggestion of exaggeration by the District Judge regarding AD's condition which, before her relationship with the Appellant, had led her to stay inside one room for significant periods.
29. She said the District Judge should not have downgraded the impact of extradition on AD to mere 'hardship' in the way that he did, and certainly would not have done so in light of the facts now. Ms Westcott said that AD is now even more vulnerable to the severe impact of extradition by virtue of entering the final stage of her pregnancy (by

the point of the appeal hearing), deepening what was already her heavy reliance on the Appellant. AD attempted suicide in 2016, 2021 and again in 2022, after these proceedings began, which Dr Gallardo recorded had already significantly worsened AD's condition (report, [6.28]- [6.30]).

30. As foreshadowed by the order of Sir Duncan Ouseley, I am asked to consider AD's most recent evidence as a reliable description of daily life now, which has inevitably changed since the extradition hearing on 23 September 2022. (Ms Bostock did not object to my receiving this evidence.) I am also asked to take into account the time these appeal proceedings have taken to come on since the extradition hearing in September 2022.

*The Respondent's submissions*

31. On behalf of the Respondent, Ms Bostock submitted that although the impact of the Appellant's extradition on AD will be significant given her mental health issues, she has been well cared for by family members for a number of years, and will continue to be. Overall, Ms Bostock said the judge appropriately assessed the impact of extradition on AD, and did not err in a way which could allow me properly to overturn his conclusion. She said AD's pregnancy did not undermine the judge's Article 8 conclusion.
32. Ms Bostock pointed out that the District Judge found that the Appellant had exaggerated his evidence to bolster his case (judgment, [28], [34]). In particular, the judge rejected the Appellant's account that he had left Albania innocently, and instead found the Appellant had fled once his co-defendants had been arrested and in order to avoid arrest himself. He had then deliberately absented himself from his trial.
33. Therefore, she said I needed to be cautious about relying on Dr Gallardo's opinions where these were based on what the Appellant had told her about AD, eg, that she did not leave home without him ([6.57]). Ms Bostock said that the evidence was that, in fact, AD could and did leave the house without him, and visited relatives in Ashford. She said in cross-examination (judgment, [33]):

“My cousin`s wife still lives in their house in Ashford. If she needs me her [sic] I go there (another cousin who also lives in Ashford comes to collect me sometimes to accompany me to my sister-in-law). I visit maybe weekly, it depends.”

34. Ms Bostock did not, however, challenge that the Appellant suffered from mental health problems, including depression and anxiety.
35. Ms Bostock pointed to positive features of the evidence about AD, including that she was attending college (as of January 2024); that she was feeling positive about her pregnancy; and, in her updated proof of evidence dated 20 May 2024, she said, ‘I do not have thoughts about self-harm or suicide at the moment because I am thinking about the baby and bringing him into the world with Hans.’ She also said there were points on which AD appeared to contradict herself, including about whether she was or was not able to leave the house by herself and without the Appellant (Skeleton Argument,

- [24]). She said that on any reading, the impression that AD is too afraid to leave the house except with her husband, is not borne out by close scrutiny of the evidence.
36. She said at the time of the hearing AD had been relying on the Appellant for less than 12 months. Before that, she had lived with a cousin and his family and had been able to move out to her own flat, where AD joined her. Dr Gallardo reported at [6.32] that the family had found ways of getting AD to come out of her room and eventually out of the house.
37. Ms Bostock therefore said the family could support AD in the absence of the Appellant after the birth of their child. The Appellant would not be left alone with their baby.

### **The law**

38. The relevant legal principles are not in dispute.
39. Article 8 of the ECHR provides:
- “1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or, for the protection of health or morals, or for the protection of the rights and freedoms of others.”
40. This appeal is brought under s 103 of the EA 2003. I can only allow the appeal if the District Judge should have discharged the Appellant under Article 8: see s 104(3).
41. Because this a fresh evidence case, the question for me is not whether the District Judge was wrong, which is the general test on appeal: see *Love v Government of the United States of America* [2018] EWHC 172 (Admin), [22]-[26].
42. Instead, I have to make my own assessment *de novo*, on the material as it now stands, in order to determine whether extradition would be a disproportionate interference with the Appellant's Article 8 rights, according to the well-known principles established in *Norris v Government of the USA (No 2)* [2010] 2 AC 487; *H(H) v Italy Deputy Prosecutor of the Italian Republic, Genoa* [2013] 1 AC 338; and *Polish Judicial Authorities v Celinski* [2016] 1 WLR 551.
43. The *de novo* test in fresh evidence cases is established by decisions such as *Olga C v The Prosecutor General's Office of the Republic of Latvia* [2016] EWHC 2211 (Admin), [26]; *Versluis v The Public Prosecutor's Office in Zwolle-Lelystad, The Netherlands* [2019] EWHC 764 (Admin), [79]; and *De Zorzi v Attorney General, Appeal Court of Paris* [2019] 1 WLR 6249, [66].
44. The approach to disproportionality and Article 8 in the extradition context was explained in *H(H)* by Baroness Hale at [8]. She said:

“8. We can, therefore, draw the following conclusions from *Norris*: (1) There may be a closer analogy between extradition and the domestic criminal process than between extradition and deportation or expulsion, but the court has still to examine carefully the way in which it will interfere with family life. (2) There is no test of exceptionality in either context. (3) The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition. (4) There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences; that the United Kingdom should honour its treaty obligations to other countries; and that there should be no “safe havens” to which either can flee in the belief that they will not be sent back. (5) That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved. (6) The delay since the crimes were committed may both diminish the weight to be attached to the public interest and increase the impact upon private and family life. (7) Hence it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe.”

45. Where children may be affected by extradition, eg, where it is proposed to extradite one or both of their parents, Baroness Hale said at [15]:

“15. However the matter is put, therefore, *ZH (Tanzania)* made it clear that in considering article 8 in any case in which the rights of a child are involved, the best interests of the child must be a primary consideration. They may be outweighed by countervailing factors, but they are of primary importance. The importance of the child’s best interests is not to be devalued by something for which she is in no way responsible, such as the suspicion that she may have been deliberately conceived in order to strengthen the parents’ case.”

## **Discussion**

46. The key issue in this case is the impact which the Appellant’s extradition would have on AD and their unborn child. Considering matters for myself, I am satisfied that in this case, exceptionally, the Appellant’s extradition would be a disproportionate interference with his and his wife’s and their unborn child’s Article 8 rights because its impact upon those rights would be of the necessary severity. My reasons for reaching that conclusion are as follows.

47. Firstly, the judge accepted in full AD's shocking account of how she was trafficked aged 17 and forced into prostitution, in the course of which she was drugged to make her compliant. Hence, Dr Gallardo said at [3.01]:

“3.01 ... [AD] has a traumatic history of being abducted and trafficked at the age of 17. She has suffered with her mental health since escaping and seeking refuge in the UK in 2016. There are concerns as to how [AD] would be affected in the event of Mr Kacerri's extradition and an assessment to consider this was requested.”

48. Dr Gallardo's executive conclusion at [3.02] was:

“3.02 Following the assessment, I am of the opinion that [AD], in the event of Mr Kacerri's extradition, would experience serious psychological harm and the results could be devastating. This view is formed because the assessment identified that [AD] meets the diagnostic criteria for PTSD, as well as severe depression and anxiety, which are likely to be secondary. Her mental health currently has a severe impact on her level of functioning, in that she cannot leave the house alone or work, and struggles to form trusting relationships. In the past, at times of extreme distress she has attempted to end her own life, and there is a high probability that she would attempt this again in the future. Mr Kacerri is her main form of support at present, and there is a lack of other protective factors. She is very vulnerable as a result and is why I am of the opinion that the harm would be so serious. Further opinion is provided in my response to the instructions.”

49. Dr Gallardo's report is dated 16 September 2022. The hearing before the District Judge was the same month. There was then an unfortunate period of delay, and the appeal hearing before me did not take place until June 2024. Even allowing for the fact there may have been some limited improvements in AD's ability to cope as reflected, for example, in her sometimes being able to leave the house alone, I conclude that Dr Gallardo's central conclusion that the Appellant's extradition would be 'devastating' for AD is accurate. There is, and can be, no challenge to her diagnosis as to the mental health conditions from which AD suffers.

50. Dr Gallardo said at [4.07]-[4.09]:

“4.07 She states that she cannot return to Albania as her life would be under threat as a result of her being trafficked. When she arrived in the UK she lived with her cousin and his family in Ashford. He is the only other person apart from Mr Kacerri that she has reported she can confide in.

4.08 Between 2016 to 2018, she was not able to leave her room for around 1 and a half years. She suffered from nightmares, panic attacks, and was terrified to leave the

house. She reported that due to threats she received, she felt that she was being watched and hunted down. She stated that she still occasionally has panic attacks and cannot leave the house alone. Mr Kacerri is her main form of support. She stated that she thinks her mental state would deteriorate and that she would consider ending her life if Mr Kacerri were to be extradited.

4.09 She finds it very difficult to talk about her past experiences, though has sought some support through Migrant Relief, a charity for refugees.”

51. At [4.15] Dr Gallardo referred to the counselling sessions which AD had had in the UK, intended to help her come to terms with the sexual abuse she had suffered.

52. At [6.23] she said:

“6.23 [AD] described Mr Kacerri as very supportive. She said that he has been one of the few people she has been able to share details of her traumatic experiences with and that he has been very understanding of her mental health needs. She described how he encourages her to get of the house regularly, and supports her with household tasks when she is feeling low. When asked to describe Mr Kacerri in three words, she said he was supportive, respectful and sensitive.”

53. At [6.26]-[6.28] she said:

“6.26 [AD] reported no difficulties with her mental health prior to being abducted and trafficked.

6.27 When she arrived in the UK, she began experiencing severe headaches, increased anxiety (shortness of breath, palpitations), flashbacks and nightmares, low mood and suicidal ideation. She said she struggled to leave her cousins house for 1 and half years.

6.28 [AD] said that she has attempted suicide three times, by cutting her wrists, since she has been in the UK; Once in 2016, when she first arrived in Ashford, once in 2021, when her abductor sent her a photo of the front door of her family home in Albania via social media, and again in 2022, when she found out about Mr Kacerri’s extradition. She showed me scars on her wrists from the most recent attempt.”

54. At [6.29]-[6.35] she said:

“6.29 [AD] has been prescribed Sertraline since March 2019. She reports that it has helped her feel more relaxed. She attended 10 counselling sessions in total from August

2019 to August 2020, which she accessed through the charity, Migrant Support. She said that she found it helpful as she had not shared her traumatic experiences with anyone else prior to this. The therapy ended as they moved to telephone sessions during the COVID-19 pandemic and she found these less helpful.

6.30 Since [AD] found out about Mr Kacerri's extradition, she reported that her mental health has deteriorated significantly. On a scale of 0 to 10, where 0 is depressed and 10 is happy, [AD] said she is currently a 1/10. She stated that she likes to sit in a dark room and not go outside. She does not enjoy things as much as she used to (e.g. cooking). She has become increasingly more tearful. With regards to her sleep she reported having a mixed pattern. She said that sometimes she sleeps more to avoid her negative thoughts. She is also experiencing increased nightmares, and when she does, she tries to avoid sleeping. She reported feeling like people are going to come after her, resulting in hypervigilance. She reported no history of psychosis, however she did say she sometimes imagines people are calling her name when she is out.

#### *6.31 Personal support*

6.32 When [AD] arrived in the UK her main source of support was her cousin, who she lived with, and his wife and two daughters. She said that they would find ways of getting her to come out of her room and eventually, out of the house. Her cousin also provided financial support.

6.33 [AD] reported that her cousin went to prison however, in October 2021 following allegations of physical abuse towards his daughters. [AD] did not believe that these were true. [AD] still has frequent contact with his wife, though she reported that she offers more support to her, rather than the other way round. Mr Kacerri's younger sister, also lives in London. [AD] has some contact with her and is planning on going to college with her in the future.

6.34 [AD] said that her main source of support at present is Mr Kacerri. When asked who would support her if he were to be extradited, she said no one.

6.35 [AD] reported that she would like to seek support again for her mental health and was planning on speaking to her GP about potential referrals. She is still in contact with a support worker from Migrant Support charity named Lita, who could also support her to access therapy."

55. At [6.69] onwards Dr Gallardo set out the results of her psychometric assessment of AD. These were that: AD suffers from severe depression; severe anxiety; severe hopelessness; and that she is experiencing difficulties related to post-traumatic stress. At [7.01] Dr Gallardo confirmed her diagnosis that AD suffers from PTSD.
56. At [7.05]-[7.07], under the heading ‘To consider the impact of Mr Kacerri’s extradition would have on [AD’s] mental health’, Dr Gallardo’s opinion was that:

“7.05 On the basis of my assessment, I am of the opinion that [AD’s] mental health will deteriorate significantly, and she will suffer severe anxiety and depression in the event of her husband’s extradition. This view is formed because of her current clinical presentation outlined in the section above. Mr Kacerri is also her main source of support and there is an absence of any other protective factors. In addition, however real or otherwise the threat to [AD’s] life is if he were extradited, [AD] will also be very anxious about his safety. There is a possibility that her mental state will deteriorate to such an extent that she may attempt to end her own life. While she did not state that she was experiencing thoughts of killing herself at present on the Beck Depression Inventory, [AD] reported high levels of hopelessness about the future on the Beck Hopelessness Questionnaire which predicts suicide risk. She also has reported a history of attempting to end her own life at times of extreme distress and was able to corroborate this with the scars on her arm which were consistent with self-harm.

7.06 [AD’s] level of functioning will also likely deteriorate. PTSD is associated with a wide range of problems including difficulties at work, social dysfunction and physical health problems (Galovski and Lyons, 2004; Smith et al., 2005). [AD] is currently unable to leave the house alone or work due to her mental health. Mr Kacerri supports her to get out of the house e.g. to go to the shops or out for walks. He also supports her with cooking and cleaning, especially at times when her mood is low and she lacks interest and motivation. In the event that he is extradited, it is likely that she will not be able to do these things on her own. While there are some people who might be able to support her, such as her cousin’s wife or Mr Kacerri’s sister, she will be living alone, reducing her capacity carry out day-to-day activities.

7.07 Overall, [AD] presents as a very vulnerable person and it is difficult to be confident that she will cope well in the event of her husband’s extradition. Subsequently, I am of the view that the harm will be serious and have devastating consequences.”



57. After discussing the various treatment options for AD's PTSD, Dr Gallardo said at [7.11]:
- “7.11 In summary, it is possible that [AD's] mental state would improve if she were to access appropriate support. I have encouraged her to speak to Migrant Care or her GP. Given her current set of circumstances however, she is likely to have a poorer prognosis than those entering treatment with stability and support and I remain of the view that the harm to her will likely be very serious in the event of Mr Kacerri's extradition.”
58. Whilst, as I have explained, the question of proportionality on this appeal is for me, given this is a fresh evidence case, I do consider, with respect, that the District Judge was wrong on the material before him in his assessment of the impact extradition would have on AD. I have concluded, after careful reflection, that he significantly underestimated the impact which the Appellant's extradition would have on AD, so that his decision can be said to be wrong: cf *Love*, [26] (this factor ‘... should have been weighed so significantly differently as to make the decision wrong ...’).
59. Whilst I accept AD would have some family support in the Appellant's absence, the cousin's imprisonment plainly complicates matters. But Dr Gallardo was aware of AD's family support (because she referred to it: see above in her report at [6.32]-[6.33]). Nonetheless, she noted AD's history (not just from what she said during their assessment, but observing AD's physical scars and treatment) and found that AD's mental health has a severe impact on her level of functioning, in that she cannot leave the house alone or work, and struggles to form trusting relationships. As well as being too unwell to work [6.19], when AD's mood is low she needs the Appellant's help at home with cooking and cleaning ([7.06]). If the Appellant were to be extradited, as AD's main source of support, there is a high probability AD would attempt suicide again.
60. In her report at [7.07] Dr Gallardo used the word ‘devastating’. Ms Westcott said that in her oral evidence, Dr Gallardo confirmed her use of that was used deliberate, and reflected the risk of suicide. This evidence was not disputed by the Respondent. I attach considerable weight to Dr Gallardo's deliberate and precise choice of language.
61. I think there is force in Ms Westcott's criticism that the District Judge placed insufficient weight on Dr Gallardo's evidence, and instead focused unduly on practical and, in particular, financial considerations. Although Dr Gallardo's evidence was summarised (at least in part) in [70], his judgment suggests that the District Judge may have failed to consider properly the responses to the suggestions put to Dr Gallardo in cross-examination which she disagreed with, as well as other points that she made.
62. Ms Westcott summarised these suggestions as follows, and again the accuracy of the summary is not challenged. Dr Gallardo: (a) rejected the suggestion that in the Appellant's absence, AD could simply return to live with her cousin in Ashford, because of his conviction and imprisonment for cruelty to his own children, and those children being placed in foster care; (b) stressed that therapy for AD is likely to be ineffective in an unstable home environment; (c) said that merely increasing AD's

medication would not help, as medication alone is not sufficient in order to treat PTSD, which requires therapy and stability. A further aggravating factor is AD's deep worry for the Appellant if he were to be surrendered to Albania, where they believe he is at risk due to a blood feud/threats arising from his ex-brother-in-law; (d) emphasised AD's authentic responses during the assessment, and the deep extent of her reliance on her husband; (e) disagreed with the suggestion that practical and financial support could replace the Appellant's essential role in AD's life; (f) cast doubt on the suggestion that the secretive telephone contact between AD and her mother and sisters in Albania would be capable of amounting to a protective factor against self-harm or suicide; (g) said it is unlikely she would talk to them about her multiple rapes, assaults and trafficking. This would be, in part, because of the key question of trust; her father having disowned her and forbidden her mother and sisters from contacting her.

63. In short, I do not find there was a sufficient or adequate basis for disputing Dr Gallardo's carefully considered opinion – which, as I have said, was strongly maintained in the face of clear suggestions to the contrary - that the Appellant's extradition would be 'devastating' for AD. Extended family support for AD there may be, but this can be no substitute for the support that only a loving spouse or partner can bring, and certainly not in the case of someone who is as vulnerable as AD plainly is.
64. But even if I am wrong about that, deciding the Article 8 issue for myself, AD's pregnancy means that looking at all the circumstances now, extradition would plainly be a disproportionate interference with the Article 8 rights of those concerned.
65. AD is now even more vulnerable to the impact of the Appellant's extradition by virtue of her now being heavily pregnant. That vulnerability will only deepen in the event of the Appellant's extradition, given what I find to be her already heavy reliance on the Appellant.
66. For example, I note the evidence from AD that earlier in her pregnancy (updated proof, [9]):
- “When I was in pain I wanted to go to hospital in the middle of the night because of the severity of the pain and the heavy bleeding. I thought maybe I had lost my baby. However, I could not go to the hospital because I could not manage on my own without Hans. Hans could not come with me at night because of his tagged curfew and the risk of being in breach. There is no prospect of me dealing with this on my own. This has happened twice and it was frightening to say the least.”
67. I think it is clear from AD's own evidence, and that of Dr Gallardo, that AD already struggles significantly to cope with daily life. Given that existing struggle, her difficulties will only likely increase once her baby is born, with all the added emotional, financial and other pressures that that will bring. Those difficulties will be magnified if she has to cope alone without the Appellant. In saying that, I have not ignored aspects of AD's evidence where she reported feeling positive in some ways about the forthcoming birth.

68. Although they are to an extent unpredictable, I do take into account, as I have to per *H(H)*, the interests of the unborn child. They are a primary consideration. That child's welfare will, or may be, significantly affected by the Appellant's extradition if AD is left with sole parental responsibility, given her serious and ongoing mental health difficulties.

### **Conclusion**

69. For these reasons, this appeal, on its particular special facts, is allowed. The relevant decision is quashed.