



Neutral Citation Number: [2024] EWHC 2950 (Admin)

Case No: AC-2024-LON-001020

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

IN THE MATTER OF AN APPEAL UNDER
SECTION 26 OF THE EXTRADITION ACT 2003

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 November 2024

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

SA

Appellant

- and -

THE BUFTEA COURT, ROMANIA

Respondent

Rachel Barnes KC and Graeme Hall (instructed by **Taylor Rose MW Solicitors**)
for the **Appellant**
Amanda Bostock (instructed by the **CPS Extradition Unit**) for the **Respondent**

Hearing date: 12 November 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 21 November 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Approved Judgment**Mr Justice Murray:**

1. This is an appeal under section 26 of the Extradition Act 2003 (“the 2003 Act”) by the appellant, SA, against the order made on 19 March 2024 by DJ Sternberg at the Westminster Magistrates’ Court to extradite him to Romania. The district judge set out his reasons for ordering SA’s extradition in a judgment handed down on that day (“the Judgment”).
2. On 28 May 2024, Sir Peter Lane, sitting as a High Court Judge, granted permission to appeal on all grounds. He noted that the appellant had also applied for permission to adduce fresh evidence in the form of a letter dated 24 April 2024 in which the Single Competent Authority (the Home Office) gave a conclusive grounds decision that SA is a victim of modern slavery (“the Conclusive Grounds Decision”). Sir Peter Lane ordered that this application should be dealt with at the substantive hearing of the appeal, with the Conclusive Grounds Decision to be considered in the meantime by the court *de bene esse*.
3. At the hearing before me, SA also applied for permission to adduce the Home Office’s guidance entitled “Recovery Needs Assessment (RNA), Version 8”, which outlines the nature of the support for which SA is now eligible as a victim of modern slavery.
4. The appellant also applies for anonymity. The district judge anonymised the appellant in the Judgment for reasons he gave at paragraph 7 of the Judgment. I anonymise the appellant in light of his status as a victim of modern slavery in order to minimise the risk of unjustified interference with his rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”).
5. An important aspect of this case is that SA has been diagnosed with a learning disability, with post-traumatic stress disorder (“PTSD”), and with cognitive difficulties. An expert psychiatrist instructed by SA’s solicitors found, after assessing SA, that he suffered from “mild mental retardation”, learning disability, and “a reduced level of intellectual functioning resulting in a diminished ability to adapt to the daily demands of the normal social environment”, as a result of all of which he suffered from significant vulnerability. The same psychiatrist also found that he met the criteria for PTSD.

Grounds of appeal

6. The appellant appeals on four grounds:
 - i) Ground one: the district judge made unsupportable findings of fact, namely, that:
 - a) SA is not a victim of trafficking;
 - b) SA was not a victim of sexual abuse; and
 - c) the expert evidence of Dr Ann Rawlings, a registered forensic psychologist, should be given “little weight” to the extent that it was not consistent with the evidence given by another expert witness, Dr Vivek Furtado, a consultant forensic psychiatrist;

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- ii) Ground two: the district judge’s findings under section 20 of the 2003 Act were wrong, namely, that:
 - a) SA was deliberately absent from his second trial;
 - b) SA is entitled under Romanian law to a retrial; and
 - c) in a retrial in Romania, SA would have the rights specified in section 20(8) of the 2003 Act;
- iii) Ground three: the district judge was wrong to conclude that extradition of SA would not breach his rights under Article 8 of the ECHR; and
- iv) Ground four: the district judge was wrong to conclude that extradition would not breach his rights under Articles 5 and 6 of the ECHR.

The extradition request

7. The respondent seeks the extradition of SA pursuant to a warrant dated 31 January 2023, which was issued by a judge of the Buftea Court in Romania and which was certified by the National Crime Agency on 6 February 2023 (“the Arrest Warrant”). The Arrest Warrant seeks SA’s return to serve the remainder of his sentence, namely, detention for a period of one year, ten months, and 18 days, following his conviction for the following offending:
 - i) On 28 May 2018, when SA was aged 16 years and 10 months, while residing in a care home, he and four other boys, all residents of the care home, orally and anally raped two boys, one aged 14 years and one aged 12 years, who were also residents of the care home. SA was the boy who actually carried out the rapes. In relation to each victim, SA was “abetted” by one of his co-defendants and “assisted in the acts of coercion” by the other three co-defendants. This offending has been referred to in these proceedings as “Offence 1”.
 - ii) On the same occasion, SA, together with his co-defendants, coerced the same victims into engaging in oral and anal intercourse with each other, while SA and his co-defendants watched. This offending has been referred to in these proceedings as “Offence 2”.

The applicant’s early personal history

8. Before turning to the proceedings in Romania that led to SA’s conviction and sentencing in respect of Offence 1 and Offence 2, I briefly summarise SA’s personal background.
9. He was born on 25 July 2001 in Romania. His biological parents are Roma. They abandoned him when he was about one year old, and he was taken into foster care, where he stayed, other than for short periods towards the end, until he was 16 years old. He had no further contact with his biological parents. When he was about 6 years old, he began to have some short visits with members of his biological family, about once or twice a month, principally with his grandmother and his uncle and aunt from his father’s side. When he was about 13 years old, he found out that his biological father had died in France following an accident.

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10. SA was taken into foster care by a woman named Mariana Butoi, who had children of her own, and also fostered other children. He considers her his adoptive mother. Ms Butoi provided two witness statements for the extradition hearing. She does not speak English. Her evidence was translated from Romanian into English.
11. When SA was young, he got on well with Ms Butoi, but by the time he was about 15 years old, difficulties arose between them. Ms Butoi says that this is because he “got into a bad crowd, he started smoking and things changed. He was influenced by his Roma family, who he had started to see on contact visits by then, and by a bad crowd at school.”
12. Ms Butoi contacted the local authority to end the foster placement. The local authority placed him in a children’s home for one week in 2014 or 2015, after which he returned to live with Ms Butoi for a year. About a year later, he went into local authority accommodation for three weeks and then returned to live with Ms Butoi. In 2017, when SA was 16, the local authority put him in the care home where Offence 1 and Offence 2 occurred.

The proceedings in Romania leading to SA’s conviction and sentencing

13. On 14 June 2018, SA was interviewed in relation to the offending summarised at [7] above by the Prosecutor’s Office at the Buftea Court. He was remanded in custody the next day.
14. On 10 July 2018, both Offence 1 and Offence 2 were referred by the Prosecutor’s Office at the Buftea Court to the Directorate for the Investigation of Organised Crime and Terrorism (“DIICOT”). According to Dr Mihai Mareş, who was instructed by SA’s solicitors to provide expert evidence on matters of Romanian law and provided a report dated 15 September 2023, for the purposes of which he had reviewed the Romanian court files relating to SA’s convictions for each of Offence 1 and Offence 2, this offending was referred to DIICOT “as there were indications of the commission of the crime of child pornography”.
15. On 3 August 2018, DIICOT decided to prosecute Offence 1 but ordered that Offence 2 be transferred back to the Prosecutor’s Office at the Buftea Court on the basis, according to the evidence of Dr Mareş, that the criminal investigation was “incomplete” and for other procedural reasons.
16. On 30 January 2019, having attended his trial in person, SA was convicted of Offence 1 by the Ilfov Tribunal. He was sentenced to “educational detention” for a period of two years 10 months.
17. On 23 April 2019, the Bucharest Court of Appeal rejected SA’s appeal. His conviction therefore became final.
18. On 3 October 2019, the Prosecutor’s Office at the Buftea Court took a statement from SA in which he initially disagreed that he was involved in Offence 2 but then admitted his involvement and expressed regret for his conduct.
19. On 24 October 2019, SA was indicted for Offence 2 in proceedings before the Buftea Court.

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20. On 26 November 2019, SA was released early from custody in respect of the sentence imposed on him in relation to Offence 1, with 493 days of the sentence remaining to be served. He was required to report to Probation. According to further information from the respondent, (i) SA failed to report as required within 10 days of the date of his release, and (ii) more generally, since the beginning of his probation period, there were “deviations ... showing an oscillating conduct in terms of compliance with the obligation to report to the Ilfov Probation Service on the dates set”.
21. On 24 July 2020, the day before his 19th birthday, SA made a notarised statement in which he acknowledged that he was a defendant in respect of criminal proceedings relating to Offence 2 in the Buftea Court of First Instance, and then stated as follows:
- “... I hereby declare, having acknowledged the provisions of article 326 of the Criminal Code regarding giving false statements, that I plead guilty to committing the offence as described in the indictment [Offence 2] and I do not challenge the criminal prosecution evidence and I hereby request that the judgment be made based on the simplified PROCEDURE in accordance with articles 374 and 396 paragraph 10 of the Criminal Procedure Code.
- ...”
22. In August 2020, SA left Romania and arrived in the UK with members of his biological family, namely, his aunt, his uncle, and two cousins.
23. In November 2020, about three months after arriving in the UK, SA made himself known to police officers in Hull. As he could not speak English, he was taken to a police station where, through a Romanian interpreter, he told the police, among other things, the following:
- i) He had jumped out of a bedroom window in order to escape from the flat where he had been staying with his family.
 - ii) He had come with his family by bus from Romania, as they had “promised [him] a better life” in the UK.
 - iii) His aunt and uncle had taken control of his passport, identification card, bank card, and mobile phone and did not allow him access to money. He was not allowed to leave home unless it was to go to work. Initially, he had been given a job at the Karro factory in Hull.
 - iv) When he was on occasion sent to the shop to buy cigarettes, he was supervised by his cousin to make sure he did not run away.
 - v) He was not forced to work in the home, but his family did make him engage in shoplifting for them. On one occasion, he was arrested at Asda for shoplifting. As a result, he lost his job at the Karro factory.

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24. SA asked the police to retrieve his passport from his family. The police attended at the address where SA had been staying with his family and recovered his passport and other documents.
25. The police referred SA to the National Referral Mechanism on 20 November 2020. On 26 November 2020, the Single Competent Authority issued its decision that there were reasonable grounds for suspecting that SA was a victim of modern trafficking (“the Reasonable Grounds Decision”).
26. On 2 March 2021, the Buftea Court convicted SA of Offence 2 in his absence.
27. On 16 June 2021, the Bucharest Court of Appeal merged the sentence for Offence 2 with the sentence for Offence 1 to produce a total sentence of three years and four months’ detention. The time remaining to be served on the merged sentence, which I have indicated at [7] above, takes into account SA’s period in custody serving his sentence in relation to Offence 1 prior to his early release and also time spent on remand in custody in Romania.
28. On 10 February 2023, SA was arrested on the Arrest Warrant at an address in Manchester and remanded in custody.

The extradition hearing and the Judgment

29. The extradition hearing took place before DJ Sternberg on 19 September 2023, 2 February 2024, and 5 February 2024. The representation of the parties was as it is for this appeal. The adjournments that occurred in the extradition hearing were to accommodate the appellant’s requests to be allowed time to provide expert evidence from a psychologist, from a psychiatrist, and from a Romanian lawyer. The district judge acceded to a request to anonymise the appellant in the extradition proceedings and in the Judgment, but he refused any further reporting restrictions.
30. On 19 September 2023, the district judge heard live evidence from Dr Rawlings and Dr Furtado, each of whom had assessed SA. Dr Rawlings was asked questions in cross-examination. Dr Furtado was not. Dr Rawlings had produced a report dated 9 June 2023 and an addendum report dated 30 June 2023. Dr Furtado had produced a report dated 5 September 2023. The district judge adjourned the case part heard. He granted an application for SA to be assessed by an intermediary and permission for SA to be assisted by an intermediary at the resumed hearings on 2 and 5 February 2024.
31. On 2 February 2024, the district judge heard live evidence from Dr Mareş. He was asked questions in cross-examination.
32. SA provided a proof of evidence dated 26 April 2023, but, despite having been permitted the assistance of an intermediary, he did not offer himself for cross-examination at the extradition hearing.
33. On 5 February 2024, the district judge heard closing submissions from the parties.
34. On 6 March 2024, the Supreme Court gave judgment in two cases on the proper interpretation of section 20 of the 2003 Act, *Bertino v Italy* [2024] UKSC 9, [2024] 1 WLR 1483 (SC) and *Merticariu v Romania* [2024] UKSC 10, [2024] 1 WLR 1506

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(SC). Therefore, the district judge invited and received further brief written submissions from both sides on the effect of those decisions on this matter.

35. On 19 March 2024, as already noted, the district judge handed down the Judgment.
36. In addition to the evidence already mentioned, the district judge had:
- i) English translations of two witness statements from Ms Butoi, one dated 8 September 2023 and an addendum statement dated 1 February 2024;
 - ii) an English translation of the notarised statement made on 24 July 2023 in respect of Offence 2;
 - iii) the Reasonable Grounds Decision;
 - iv) letters dated 16 February 2023 and 20 February 2023 from Andy Kinnaird, an advocate at Causeway (UK), an organisation that provides practical and emotional support to victims of trafficking, SA having entered their support service on 30 June 2022;
 - v) an intermediary report and recommendations dated 25 January 2024 prepared by Ms Diane Robson, an Intermediary Manager for Triangle, an organisation that provides specialist intermediaries for children and young people;
 - vi) a witness statement dated 1 February 2024 from Ms Katherine Newey, a solicitor at Taylor Rose MW, SA's solicitors, dealing with attempts to contact Romanian lawyers regarding SA's case, delays after referral to the National Referral Mechanism in the provision of conclusive grounds decisions by the Single Competent Authority, and with matters relating to the intermediary assessment of SA;
 - vii) a report dated 3 June 2021 issued by the Group of Experts on Action against Trafficking in Human Beings ("GRETA") entitled "Evaluation Report – Romania – Third evaluation round – Access to justice and effective remedies for victims of trafficking in human beings" ("the GRETA Report"); and
 - viii) a report issued by the United States Department of State's Office to Monitor and Combat Trafficking in Persons entitled "2021 Trafficking in Persons Report: Romania" ("the State Department Report").
37. In addition to the information in the Arrest Warrant, the district judge had the following further information from the Romanian authorities:
- i) a prison assurance dated 23 February 2023;
 - ii) further information dated 23 March 2023 from Judge Antofie Marcela; and
 - iii) further information dated 20 April 2023 and 9 June 2023, respectively, from Delegated Judge Dragomir Valentin.

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38. The district judge summarised the written and oral evidence in some detail in the Judgment. He set out his findings of fact at paragraph 34 of the Judgment. I briefly summarise his key findings:

- i) He could give “very little weight” to SA’s written evidence. The court had appointed an intermediary to assist him and would have set ground rules had he given live evidence. His choice not to give live evidence meant that his account was untested. In particular, the district judge was unable to accept SA’s evidence (a) that he was a victim of modern slavery and human trafficking, (b) regarding his knowledge of the proceedings against him in Romania, and (c) regarding his claim to have been physically and sexually abused whilst in prison in Romania.
- ii) The district judge noted the Reasonable Grounds Decision, but he did not consider that he was bound by it. He observed that SA’s untested account had some hallmarks of modern slavery such as control over his movements and finances, but SA was not prevented by his family from seeking help, and his passport was returned to him when the police requested it. The evidence of his having been trafficked came only from SA and was not tested. Accordingly:

“... in circumstances where the evidence of the requested person having [been] trafficked comes from his own account, repeated by others, which has not been tested, I am unable to conclude that he is a victim of modern slavery or human trafficking and I do not make such a finding.”

- iii) To the extent that SA’s untested evidence about the criminal proceedings against him in Romania conflicted with the further information provided by the Romanian authorities and with the evidence of Dr Mareş, the district judge preferred the further information and the evidence of Dr Mareş.
- iv) SA was present at his trial in relation to Offence 1. After he was released on probation, he was aware of his obligations to report to the probation service in Ilfov from 16 January 2020 to 2 April 2021, and he failed to comply with those obligations.
- v) In relation to the proceedings resulting in his conviction for Offence 2, SA was plainly aware of the proceedings, given his notarised statement admitting his guilt, which was submitted to the Romanian court by the lawyer that he had instructed. Accordingly, the district judge accepted the statement in the Arrest Warrant that SA was aware of his trial. SA was therefore deliberately absent from his trial for Offence 2.
- vi) Although SA was deliberately absent from the trial for Offence 2, the district judge did not have sufficient information to enable him to conclude that SA was a fugitive. He did not accept SA’s account that he was trafficked or taken from Romania to the UK against his will.
- vii) The district judge did not accept SA’s account regarding having been forced to hand over his earnings to his family. The district judge noted that after SA left his family, he was supported by the Salvation Army and the Causeway charity,

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which provided him with accommodation and support in Doncaster and Manchester. He was living independently prior to his arrest, with some support from external organisations and charities.

- viii) SA is a single man without dependants.
 - ix) The district judge accepted Dr Furtado's diagnoses that SA had "mild mental retardation, cognitive difficulties and PTSD". To the extent that Dr Rawlings reached the same conclusions, the district judge accepted them. To the extent that Dr Furtado and Dr Rawlings repeated SA's untested account in their respective reports and accepted it as true and correct, the district judge approached their reports with caution. Dr Rawlings' evidence was not as balanced as Dr Furtado's, and he placed limited weight on it.
 - x) Having accepted Dr Furtado's evidence, the district judge found that SA was more vulnerable than a similarly placed person without the same diagnoses. He did not accept, however, that SA was unable to live or function independently, unable to understand right from wrong, or in any way relieved of criminal responsibility as a result of his diagnoses. SA sought help from the police when needed, indicating a level of appreciation of the consequences of his actions and of future need, as evidenced, for example, by his asking the police to retrieve his passport. SA had sufficient cognitive ability to engage in these proceedings. There was no reason to consider that he did not have sufficient cognitive ability to engage in the Romanian proceedings.
 - xi) The district judge accepted Ms Butoi's evidence in relation to matters within her knowledge. To the extent that she repeated matters told to her by SA, the district judge gave that evidence no weight.
 - xii) The district judge accepted the evidence of Dr Mareş regarding the court files in Romania, including the reports prepared in the proceedings and the chronology of the proceedings. He also accepted his evidence that SA could seek a retrial on his return. The district judge did not, however, accept his evidence that it was unlikely that such an application by SA would be accepted or regarding the lack of a specific provision in Romanian law for special measures to be provided to defendants.
39. The district judge identified the following as the issues he was required to resolve:
- i) whether it was necessary to order SA's discharge from extradition under section 20 of the 2003 Act;
 - ii) whether the issue of the Arrest Warrant was an abuse of process on the basis that it inaccurately states that SA is entitled to a retrial in relation to Offence 2, when that is not true;
 - iii) whether SA's extradition would be contrary to his rights under Article 5 of the ECHR due to there having been a flagrant breach of his rights under Article 6 of the ECHR in respect of the trial that led to his conviction; and

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- iv) whether SA's extradition to Romania would be compatible with the Article 8 rights of SA and his family.
40. Having considered relevant statutory material and case law in relation to each of these issues and after summarising the submissions made by each party, the district judge reached the following conclusions in relation to these four issues:
- i) Section 20: The requirements of section 20 of the 2003 Act are satisfied in this case. The district judge was sure, having regard to the evidence, that SA was convicted in his presence in relation to Offence 1. The district judge was sure that SA was deliberately absent from his trial in respect of Offence 2. It was not, therefore, necessary to consider whether he would be entitled to a retrial on his return to Romania. If, however, he was wrong that SA had been deliberately absent from his trial, the district judge was sure, despite the evidence of Dr Mareş, that SA would be entitled to a retrial. The district judge rejected the submission that in the event of a retrial, section 20(8) of the 2003 Act would not be satisfied.
- ii) Abuse of process: The district judge rejected the abuse of process argument put forward on SA's behalf on the basis, in essence, that it added nothing to the section 20 challenge that he had already rejected.
- iii) Articles 5 and 6 ECHR: The district judge rejected SA's challenge under Articles 5 and 6 of the ECHR on the basis that he failed to prove on a balance of probabilities that he had suffered a flagrant denial of justice in respect of his conviction for Offence 2, applying *Popoviciu v Romania* [2023] UKSC 39, [2023] 1 WLR 4256 (SC). As to the submission that at a retrial for Offence 2, SA would not be able effectively to participate in the trial due to a lack of a statutory entitlement to special measures, the district judge was entitled to assume that the Romanian court was aware of its duty to conduct a fair trial under Article 6 of the ECHR and to rely on the presumption that it would do so. SA had not provided evidence capable of rebutting that presumption.
- iv) Article 8 ECHR: Having had regard to the well-known authorities governing the question of whether the extradition of a requested person would be compatible with his or her rights under Article 8 of the ECHR, and having considered the factors for and against extradition in this case, the district judge gave detailed reasons for concluding that extradition would not be incompatible with SA's Article 8 rights.
41. Having reached these conclusions, the district judge ordered SA's extradition to Romania under section 21(3) of the 2003 Act.

Legal principles

42. The court's powers on an extradition appeal are set out in section 27 of the 2003 Act, which provides that the court may allow the appeal if the court is satisfied that either (i) or (ii) is true, namely:

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- i) the district judge ought to have decided a question before him differently, and had he done so, he would have been required to order the requested person's discharge; or
 - ii) an issue is raised that was not raised at the extradition hearing, or evidence is available that was not available at the extradition hearing, and that issue or evidence, had it been before the district judge, would have resulted in the district judge answering a question before him differently such that he would have been required to order the requested person's discharge.
43. The test on appeal is whether the district judge's decision was wrong, namely, whether the district judge erred in such a way that he ought to have answered the statutory question differently: *Surico v Italy* [2018] EWHC 401 (Admin) at [30]-[31].
44. I set out other relevant legal principles below in my consideration of each of the four grounds of appeal.

The grounds of appeal

45. In the Judgment, the district judge summarised in considerable detail each of the submissions made by the parties on each of the issues he was required to consider. I have carefully considered each submission, and the district judge's detailed reasons for reaching his conclusions, which I have summarised.
46. Similarly, each of the four grounds of appeal is supported by detailed submissions, and the respondent has made detailed submissions in response. I have carefully considered each of these. Oral submissions took up almost a full sitting day. Given the need to hand down this judgment without further delay, I will not attempt to summarise all of the submissions in detail, but I have carefully considered all of them as well as the various authorities referred to in the written and oral submissions. I have also considered all the various documents that were available to the district judge at the extradition hearing, including, for example, the intermediary report, the GRETA Report and the State Department Report.
47. The only ground that I have found difficult to decide is ground three, concerning whether SA's extradition would be compatible with his rights under Article 8 of the ECHR. I will therefore deal with grounds one, two and four first, before turning to ground three. The fresh evidence application is concerned with ground three, and so I will deal with the application at that stage.

Ground one: unsupportable findings of fact

48. SA says that the district judge was wrong to find that:
- i) SA was not a victim of trafficking and not a victim of sexual abuse; and
 - ii) Dr Rawlings' evidence was of "little weight" to the extent that it was not consistent with Dr Furtado's diagnoses.
49. In my view, the district judge was entitled, for the reasons he gave, to reject SA's evidence, which was untested because he did not offer himself for cross-examination, despite the district judge having authorised his having the assistance of an intermediary

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should he have chosen to give oral evidence. There was no evidence of substance before the district judge to support SA's account that he had come to the UK unwillingly, that he was a victim of trafficking or modern slavery, or that he was sexually abused in prison, other than evidence coming from SA himself, which was untested and not independently verified.

50. As the district judge noted, the evidence of SA's having been a victim of trafficking/modern slavery and of his having been a victim of sexual abuse in prison, which is set out in the reports of Dr Rawlings and Dr Furtado and in the statements of Ms Butoi comes entirely from SA's self-reporting. Dr Furtado's diagnosis that SA was suffering from PTSD is not independent evidence of the cause of that PTSD, whether that was the alleged sexual abuse in prison or some other event or events.
51. The Reasonable Grounds Decision was apparently made on the basis of SA's untested account to the police. There was nothing before the district judge to suggest that the Single Competent Authority had any evidence at that stage independent of SA to conclude that he was a victim of modern trafficking. In any event, as the district judge noted, he was not bound by the conclusion of the Single Competent Authority set out in the Reasonable Grounds Decision.
52. I agree with the submission made by Ms Bostock that this part of ground one is, at least in part, based on a misinterpretation of the Judgment. The district judge made no positive factual finding that SA was not a victim of modern trafficking or that SA did not suffer sexual abuse in prison. The district judge simply concluded that he had insufficient evidence before him on which he could decide that either of these allegations by SA were true.
53. As to the district judge's decision that he could give only limited weight to Dr Rawlings' evidence to the extent that it was inconsistent with Dr Furtado's diagnoses, he gave detailed reasons, which were open to him, for reaching that conclusion. He not only read Dr Rawlings' reports, but he also heard her live evidence, including her cross-examination. The district judge gave detailed reasons at paragraph 34(x) of the Judgment for his assessment that he should only give her evidence limited weight to the extent that it differed from Dr Furtado's. I am not able to conclude that his reasoning or conclusion in relation to that evidence is wrong.
54. Accordingly, the appeal on ground one is dismissed.

Ground two: section 20 of the 2003 Act

55. The district judge's principal conclusion on this ground is that SA was deliberately absent from his trial in relation to Offence 2. In my view, that conclusion is unimpeachable for the reasons he gives. Furthermore, the district judge's conclusion on this point is supported by the evidence of SA's own Romanian law expert, Dr Mares, at part VI (Conclusions) of his report, paragraph xi.
56. The district judge was not wrong to conclude that there was insufficient evidence to support the proposition that SA had been involuntarily removed from Romania and for that reason not deliberately absent from the trial for Offence 2. The Reasonable Grounds Decision appears to relate only to SA's having been subjected to control by members of his biological family in Hull and forced there into offending by shoplifting.

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SA's own evidence, as well as that of Ms Butoi, which relies principally on what SA told her, is ambiguous at best as to whether there was any real compulsion in his travel from Romania to the UK.

57. Furthermore, the district judge was not wrong to conclude that SA's learning disability and cognitive difficulties did not prevent him from understanding the nature of the proceedings against him in relation to Offence 2, his probation obligations following his early release from custody in respect of his sentence for Offence 1, or the timing of those proceedings. The Arrest Warrant made clear that SA was "summoned in person to each trial date". The district judge was entitled to conclude on this basis that SA was not only aware of the proceedings in relation to Offence 2 but was also aware of the trial date.
58. I accept that there is a seeming inconsistency on the face of the Arrest Warrant between paragraph 3.1a and paragraph 3.4, each of which is ticked, given that these, as a matter of construction, appear to be alternatives. I do not consider that this seeming inconsistency provides a basis for concluding that the district judge was wrong to conclude that SA had been deliberately absent from his trial for Offence 2. Any ambiguity on that point was resolved by the further information. Furthermore, the district judge's conclusion that SA was deliberately absent is, as I have said, supported by the evidence of Dr Mareş.
59. The foregoing is sufficient to dispose of the appeal on ground two.
60. Therefore, it is not necessary to consider whether the district judge was right to conclude, in the alternative scenario that SA was not deliberately absent from his trial for Offence 2, that SA would be entitled to a retrial in the event of his extradition to Romania. The Arrest Warrant at paragraph 3.4 and the further information dated 23 March 2023 at para IV provide sufficient evidence that SA would, in such circumstances, have a right to retrial. The district judge was entitled to prefer that evidence on this point to the evidence of Dr Mareş. The district judge's conclusion is consistent with *Cretu v Romania* [2016] 1 WLR 3344 (Admin) at [35].
61. As to the submission on SA's behalf, which is relevant only to this alternative scenario, that the district judge could not decide under section 20(5) of the 2003 Act that SA was entitled to a retrial because he could not be confident that SA would have the rights specified under section 20(8) of the 2003 Act, the answer is that, if that stage were reached, the district judge would be entitled to rely on the presumption that Romania would comply with its obligations under Article 6 of the ECHR. There was no evidence before him that would have required him to reach a different conclusion. See also the discussion below of ground four.
62. In any event, it appears that the evidence of Dr Mareş that SA would not be entitled to a retrial (but would merely have the right to ask for one, which in his view would be likely to be refused) is based on his conclusion, consistent with the conclusion reached by the district judge, that SA was deliberately absent from his trial for Offence 2. Accordingly, although the district judge appears to have considered that he was differing from Dr Mareş on this point (see the Judgment at paragraph 34(xii), penultimate sentence), I consider that the district judge and Dr Mareş may have been at cross-purposes, for the reason I have just given.

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63. I note in passing that the evidence of Dr Mareş, as well as the text of the notarised statement itself, indicate that the trial for Offence 2 occurred under a simplified procedure that relied on SA's clear and notarised admission of guilt, which was submitted to the court on SA's instruction by his Romanian counsel. Dr Mareş gave evidence that the trial for Offence 1 was also under a simplified procedure. In each case, SA was convicted on his own plea of guilty.
64. As I have already noted, the district judge had a more than adequate basis for the reasons he gave to conclude that, on the alternative scenario that he was not deliberately absent from his trial for Offence 2, SA would be entitled to a retrial for purposes of section 20(5). Section 20(8) would pose no obstacle to extradition, for the reason I have already given.
65. For all these reasons, the appeal is dismissed on ground two.

Ground four: Articles 5 and 6 of the ECHR

66. The district judge was not wrong to conclude that extradition would not breach SA's rights under Article 5 due to a flagrant breach of his rights under Article 6 of the ECHR, given the lack of evidence to support a conclusion to the contrary.
67. As I have already discussed, the district judge rejected SA's challenge under Articles 5 and 6 of the ECHR on the basis that he had failed to prove on a balance of probabilities that he had suffered a flagrant denial of justice in respect of his conviction for Offence 2, applying *Popoviciu v Romania* [2023] UKSC 39, [2023] 1 WLR 4256 (SC). I consider that he was entitled to reach that conclusion on the evidence before him.
68. As to the submission that, at a retrial for Offence 2, SA would not be able effectively to participate in the trial due to a lack of a statutory entitlement to special measures, the district judge was entitled to assume that the Romanian court was aware of its duty to conduct a fair trial under Article 6 of the ECHR and to rely on the presumption that it would do so. SA had not provided evidence capable of rebutting that presumption. I agree with the district judge that the presumption is not rebutted in reliance simply on the mere fact that there is no explicit statutory regime setting out special measures for vulnerable adults. It is also not enough to point to the lack of a psychiatric analysis of SA before his trial and conviction for Offence 2. The district judge found that there was no other evidence sufficient to rebut the presumption. It was therefore open to the district judge to conclude that the presumption of Romania's compliance with its obligations under Article 6 of the ECHR had not been rebutted in this case.
69. SA does not dispute his guilt in relation to Offence 1 or Offence 2. That was the case when he made the notarised statement in relation to Offence 2, and that is the case now. He pleaded guilty to each offence in Romania of his own free will. No evidence was presented to the district judge, or is offered now, that SA did not understand what he was being accused of in relation to Offence 1 or Offence 2 or that he did not understand what the purpose and consequences of his pleading guilty to each offence would be. This is supported by the evidence of Dr Furtado, set out in his report dated 5 September 2023, at paragraph 91. See also the Judgment at paragraph 27, where the district judge summarised evidence given by Dr Mareş in cross-examination.
70. For the foregoing reasons, the appeal is dismissed on ground four.

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71. I am satisfied that, in reaching his determination that SA's extradition would be compatible with his rights under Article 8 of the ECHR, the district judge had regard to the appropriate authorities, identified the relevant factors for and against extradition (the Judgment at paragraphs 76-77), and reached a decision that was open to him for the reasons that he gave.
72. I have carefully considered the various criticisms by SA of the district judge's reasoning, but I am not persuaded that any of them should lead me to conclude that the district judge reached the wrong conclusion on the Article 8 objection to extradition, on the state of the evidence before him.
73. The district judge acknowledged and gave fair consideration, in particular, to SA's age at the time of the offences, and to the fact that SA is a young man who has suffered developmental delays, mild mental retardation, and PTSD, who has no current ties to Romania, and who is in a more vulnerable position than a similarly situated neurotypical person without his developmental and cognitive deficits. The district judge took into account the potential impact of extradition on SA's mental health and the fact that the impact would be greater on him than on someone without his vulnerabilities.
74. The district judge took into account that there was some delay in the completion of the proceedings in relation to Offence 2 relative to Offence 1. I have considered SA's submission that this was culpable delay by the respondent that should have particular weight in the Article 8 analysis. The district judge did not find the delay to be culpable, nor do I. The delay appears to have been due to the transfer of Offence 2 back to the Buftea Court, because DIICOT did not consider that it had been fully investigated and for additional unspecified procedural reasons. Thereafter, the delay is at least partly explicable by reference to the fact that Offence 2 proceeded before the Buftea Court rather than the Ilfov Tribunal. The delay was not so long as to be "culpable", particularly bearing in mind that some of the delay was due to SA's departure from Romania (which, as I have already discussed, the district judge had no reason to conclude was involuntary) before the completion of proceedings in relation to Offence 2 while SA was still under an obligation to report to Probation arising from his early release from his sentence for Offence 1. The district judge made a sufficient allowance in SA's favour for there having been some delay.
75. The district judge took into account as a factor weighing against extradition the time served already by SA in Romania before his early release and the time spent by SA on remand in custody in this country following his arrest on the Arrest Warrant. The district judge had regard to appropriate authorities at paragraph 83 of the Judgment, namely, *Molar v Slovakia* [2018] EWHC 2589 (Admin) and *Molik v Poland* [2020] EWHC 2836 (Admin). At the time of the Judgment, SA had a further nine months to serve in Romania. The district judge was right to conclude that this factor, while important, is not decisive or dispositive, either alone or in combination with all of the other factors in favour of discharge noted by the district judge.
76. The district judge had regard to the support and assistance received by SA in this country as a suspected victim of trafficking.

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77. At paragraph 82 of the Judgment, the district judge dealt with the risk of re-trafficking if SA was extradited to Romania. He took this factor, therefore, properly into account. I cannot say that he was wrong to conclude that this factor was not a weighty, much less a decisive, factor in SA's favour in the balancing exercise.
78. The district judge also bore in mind the substantial weight that he was required to give to the public interest in those being convicted of crimes serving their sentences and to the public interest in the fulfilment by the UK of its international obligations in relation to extradition, particularly in a case involving offences of such high seriousness, namely, oral and anal rape by SA of two child victims in a care home.
79. Before considering the application to adduce fresh evidence, I note that SA has now served a further few months on remand in custody. I have had regard to the guidance set out by Fordham J in *Molik v Poland* [2020] EWHC 2836 (Admin) at [11]. By the time this judgment is handed down, SA will still have over a month of his sentence to serve, which is longer, for example, than the remaining time to serve in the case of *Molar*, referred to in *Molik*, where the remaining time to serve was about three weeks. This is not a factor that decisively changes the Article 8 proportionality analysis at this stage.
80. The only remaining question, therefore, is whether the new evidence of the Conclusive Grounds Decision and the RNA should be admitted.
81. I have considered this evidence *de bene esse*. I have had regard to section 27(4) of the 2003 Act and the guidance in *Hungary v Fenyvesi* [2009] EWHC 231 (Admin), [2009] 4 All ER 324 (QBD).
82. In my view, the new evidence should not be admitted. While condition (a) under section 27(4) of the 2003 Act is clearly satisfied, conditions (b) and (c) are not satisfied.
83. I have had regard both to *R v Brencani* [2021] 1 WLR 5851 (CA) and *R v AAD* [2022] EWCA Crim 106, [2022] 1 WLR 4042 (CA), in particular, at [85]. The Conclusive Grounds Decision is not accompanied by any additional evidence that supports the conclusion reached. Therefore, the district judge's analysis in relation to the Reasonable Grounds Decision would also stand in relation to the Conclusive Grounds Decision. The district judge took into account in his analysis the support and assistance SA was receiving in this country as a result of the Reasonable Grounds Decision. The enhancement in the level of support to which SA is entitled following the Conclusive Grounds Decision is not of such a degree that it would have resulted in the district judge reaching a different decision on the Article 8 question such that he would have been required to order SA's discharge.
84. I bear in mind that the Conclusive Grounds Decision was decided on a balance of probabilities, having regard to SA's own account, and relates exclusively to "forced criminality in the UK (Hull) between November and August 2020 [sic]". I note that SA left Romania in August 2020, and he contacted the police in Hull in November 2020, so the period that the Single Competent Authority is referring to must be the period between August and November 2020 (not the period between November 2019 and August 2020, as indicated in SA's application to rely on fresh evidence).

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85. The forced criminality to which the Conclusive Grounds Decision refers was SA's shoplifting. The Conclusive Grounds Decision does not provide any evidence that SA was trafficked into the UK, that is, forcibly brought to the UK by his biological family. The district judge had not found that to be the case on the evidence before him, as I have already discussed. I also note that there is no nexus between SA's exploitation as a victim of trafficking and the offences of rape of which he was convicted. Such a nexus might have lessened the public interest in extraditing him to Romania to serve the remainder of his sentence, but there is none in this case.
86. Accordingly, SA's application to admit fresh evidence is refused.
87. None of the submissions made on behalf of SA has persuaded me, either singly or collectively, that the district judge's decision in relation to Article 8, which involved his careful consideration of all the relevant factors, was wrong. Accordingly, the appeal on ground three is dismissed.

Conclusion

88. For these reasons, SA's appeal against extradition is dismissed.