Neutral Citation Number: [2024] EWHC 3349 (Admin)

Case No: AC-2024-LON-0001283

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23 December 2024

Before :

THE HONOURABLE MR JUSTICE MORRIS

- -

Between :

SNT **Appellant**

- and –

DISTRICT COURT OF SOSNOWIEC (POLAND) **Respondents**

- -
- -

Rebecca Hill (instructed by **Dalton Holmes Gray, Solicitors**) for the **Appellant**
Tom Cockroft (instructed by **Crown Prosecution Service**) for the **Respondent**
Hearing date: 11 December 2024

- -

Approved Judgment

This judgment was handed down remotely at 15:00 on Monday 23 December 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 Morris:

Introduction

1. This is an appeal against the decision of District Judge Curtis ("the Judge") dated 11 April 2024 ("the Decision") to order the extradition of SNT ("the Appellant") to Poland. Permission to appeal was granted by Sheldon J on 22 July 2024. The Respondent is the District Court of Sosnowiec in Poland. I have made an order granting anonymity for the Appellant in view of the outstanding NRM referral and his outstanding asylum claim (see paragraph 67 below).

2. There are two grounds of appeal. Extradition is said to be incompatible with the Appellant's rights under Article 4 ECHR and under Article 8 ECHR. Accordingly the Appellant must be discharged pursuant to section 21A Extradition Act 2003 ("the 2003 Act").

The factual background

The arrest warrant

3. The Respondent seeks the extradition of the Appellant pursuant to an arrest warrant ("AW") issued by the Respondent on 19 December 2022. The AW was certified by the National Crime Agency on 28 March 2023. The Appellant was arrested on 28 March 2023 and appeared before Westminster Magistrates Court on the next day.

4. The AW seeks the Appellant's return to face trial. The alleged conduct relates to three offences said to have been committed in Poland between 2017 and 2018, involving substantial drug production.

5. In more detail the three alleged offences founding the AW are as follows:

   (1) From June 2017 to 22 January 2018 in Poland, acting together with Tien Manh Nguyen, he led an organised criminal group with the aim of achieving financial gain of substantial quantities of narcotic drugs and psychotropic substances and the cultivation of cannabis. This offence is punishable with 10 years' imprisonment.

   (2) From June 2017 to 22 January 2018 "by supervising and coordinating activities related to the adaptation of a hall… for the cultivation of cannabis" from which he was able to produce no less than 44 kg of cannabis herb with a market value of no less than 616,000 PLN" and actually produced "a significant amount of narcotic drug in the form of cannabis herb." This offence is punishable 15 years' imprisonment.

   (3) From June 2017 to October 2018, acting together with others, he secured and adapted a premises to produce methamphetamine. This offence is punishable with 15 years' imprisonment.

6. The Appellant has previous convictions in Poland: for robbery and fraud in 2001 (for which he was sentenced to 5 years' imprisonment in 2003); for participating in an organised criminal group and human trafficking in 2006 (2½ years' imprisonment in 2007); and for human trafficking in 2014 (12 months' imprisonment in 2017).

Further information dated 31 October 2023 provided that, in respect of the 2014 conviction, the Appellant had himself been convicted of trafficking people of Vietnamese nationality into Poland. The Further Information notes that "there is no information indicating that the aforementioned person was a victim of human trafficking… Nor a victim of any criminal offences, including rape."

The extradition hearing

7. The Appellant applied to adjourn the extradition hearing pending his asylum claim. On 8 August 2023 District Judge Clarke refused the application to stay the extradition proceedings.

8. The Appellant resisted extradition on the following two bases:

   (1) Human rights: extradition was incompatible with the Appellant's right to freedom from slavery and forced labour under Article 4 ECHR. This argument was advanced on the basis of the principle of non-punishment for criminality committed as a victim of trafficking.

   (2) Human rights: extradition was incompatible with the Appellant's right to a private life in the United Kingdom under Article 8 ECHR.

9. The extradition hearing itself took place on 7 December 2023 before District Judge Curtis. The Appellant gave evidence and was cross examined. The hearing was not completed on that date. Following further adjournments, it was concluded on 25 March 2024 when the Court heard evidence from Ms Dabrowska, a Polish lawyer. The Decision was handed down by way of written judgment on 11 April 2024 ("the Judgment") when extradition was ordered.

The evidence before the Judge

The Appellant's evidence

10. In his witness statement, which he verified in oral evidence, the Appellant explained that he had lived in Vietnam until 2000. He got into debt with a Mr Dang. In 1999 Mr Dang's associates beat him up, causing him very serious injuries and threatened that, if he did not pay back the loan, he would be killed. Mr Dang then trafficked him to Poland via Moscow. In 2011 Mr Dang allowed him to go back to Vietnam, after which he then returned to Poland. In 2014 he was in custody until September 2016 for a people smuggling offence. Whilst in prison in Poland he was subjected to beating and sexual assault. In the middle of 2018 he was told that he would have to go to a different country to work off the debt and his travel to the UK was arranged. He arrived in the UK in a container. In October 2020 he came back to the UK and claimed asylum. In September 2022 upon release from immigration detention he went to live with a friend in Luton. He says his life is now in the UK. He has a cousin who lives near his Luton address and he helps with childcare. His further oral evidence was summarised in the Judgment: see paragraph 33 below.

The medical evidence

11. Dr Vivek Furtado, an experienced psychiatrist and Head of Mental Health and Wellbeing at Warwick Medical School provided a report. He concluded that the Appellant meets the criteria for post-traumatic stress disorder ("PTSD"). Amongst the reasons for that diagnosis he identified the effect of the rape in prison in Poland as well as the violence he experienced prior to being trafficked to Poland; and the fact that he avoids discussing the incidents and has not disclosed the rape to anyone previously; and an inability to recall partially some aspects of the period prior to being trafficked. A classic feature of PTSD is avoidance of circumstances associated with the stressful. For the Appellant, discussing the traumatic symptoms is likely to have been re-traumatising for him. The Appellant would benefit from trauma focussed cognitive behavioural therapy or EMDR. Return to Poland is likely to have a significant negative impact on his mental state including a worsening of his post-traumatic symptomatology.

12. Professor Payne-James is a forensic physician, who provides expert opinion on assault and injury causation. In his report dated 14 November 2023 Professor Payne-James considered the Appellant's account of violence perpetrated against him by a loan shark in Vietnam in 1999 before he was trafficked. Having undertaken a physical examination and taken a full history, he concluded that the scars on the Appellant's body were supportive of (and in part highly consistent with) his account.

The so-called "objective" evidence

13. There are two relevant Home Office Country Policy and Information Notes ("CPIN"): 'Vietnam: Fear of Illegal Money Lenders' and 'Vietnam: Trafficking'.

14. As regards "Illegal Money Lenders", the CPIN states that illegal money lending in Vietnam is reportedly widespread (paragraph 2.4.4). Where people find themselves unable to repay loans to moneylenders with links to criminal gangs, they can be subject to harassment threats, kidnapping and violence. Threats can also be made to family members and the person's employer including threats of physical harm. (paragraph 2.4.7). Illegal money lending is often linked to migration, so where there are indicators of trafficking, decision-makers should refer to the country policy and information note on Vietnam trafficking (paragraph 2.4.8). Then in section 4, the CPIN refers to evidence that loan sharks are closely connected to trafficking victims and often act as migration brokers. Traffickers frequently take advantage of debt bondage to control their victim (paragraph 4.6.1). People are expected to pay money at each stage of the journey and are then held in servitude with the threat of violence where they owe money. Moreover victims of trafficking may be used as recruiters for new victims to pay off their debts (paragraph 4.6.2). A US State Department report referred to brokers charging workers seeking overseas employment higher fees than the law allowed, putting them in indebtedness which the traffickers could then use to exploit them. (paragraph 4.6.4).

15. There are repercussions of non-payment. Lenders call their employees or hire ganglands to carry out debt collection in an illegal manner using threats of a variety of kinds including injuring and humiliating the debtors. Many victims are controlled so that they dare not denounce and cooperate in providing evidence to the police (paragraph 4.7.1). There is also evidence that particular lenders (Giang Ho), with a reputation for ruthlessness, use extreme violence to recover loans. (paragraph 4.7.5).

16. As regards "Vietnam: Trafficking", the CPIN notes that there are a number of factors which may increase the risk of being abused or re-trafficked, including the person having an outstanding debt to the traffickers and the person having no or little education or vocational skills (paragraph 2.4.8). Furthermore in relation to prevalence within the UK the Independent newspaper had reported that the majority of Vietnamese trafficking victims are being forced into labour exploitation most often in nail bars or cannabis farms across the UK. In the period between 2009 and 2016 1700 Vietnamese nationals had been reported as suspected trafficking victims (paragraph 4.1.4). As regards debt bondage and illegal money lending, smugglers demand interest on borrowed money, and the amounts owed can rise quickly. If debt lies with the remaining family in Vietnam, this can be used as a way to pressure and control the victim. (paragraph 5.4.1).

17. Statutory Home Office guidance entitled '*Modern Slavery: Statutory Guidance for England and Wales'* v3.11 ("the Statutory Guidance") provides a comprehensive introduction to the issue. At paragraph 2.107 it addresses common myths about modern slavery including, of potential relevance in this case, addressing factors which may influence whether a claim of having been trafficked is accepted. It states, in particular, that, whilst remaining in an exploitative situation could indicate a willingness to remain there and/or an absence of coercion, there are many reasons why someone may choose not to escape an exploitative situation. It then sets out a number of examples of such reasons, including fear of reprisals, violence and not knowing how to seek help.

18. Part 3 of the Statutory Guidance is entitled "identifying potential victims of modern slavery." It points out that it is not easy to identify a potential victim. They may be reluctant to come forward with information and also tell their stories with obvious errors and/or omissions. Paragraph 3.7 provides that in determining whether a person has been subject to slavery, servitude or forced or compulsory labour regard may be had to all the circumstances including personal circumstances, physical or mental disability, or illness.

19. Finally, Chapter 7 of the *Equal Treatment Bench Book* (April 2023 revision) addresses modern slavery. It provides that victims of modern slavery are likely to be vulnerable witnesses, considerably damaged by their experiences and wary of authority figures. Patience as well as sensitivity will be required. (at pages 202 and 205). Psychological imprisonment can be just as effective as visible handcuffs but much harder to identify (at page 203).

The evidence of non-punishment in Poland

20. The evidence before the Judge on the position in Poland as to non-punishment in relation to those who have been trafficked was contained in the GRETA Report and in the evidence of Ms Dabrowska. It was referred to in the Judgment. I have considered this evidence in some detail. In the following paragraphs I highlight the key points.

The GRETA Report

21. GRETA is "the Group of Experts on Action against Trafficking in Human Beings". It is established pursuant to Article 36 of the Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT"). GRETA is responsible for

monitoring the implementation of ECAT and for drawing up reports evaluating measures taken by each party.

22. On 9 June 2023 GRETA published its report entitled "Evaluation Report: Poland. Third evaluation round. Access to justice and effective remedies for victims of trafficking in human beings". ("the GRETA Report").

23. In the executive summary, it is reported that whilst there are provisions for access to legal assistance and legal aid, in practice many victims are not assisted by lawyers during proceedings. GRETA reports that there is still no specific provision in Polish law on the non-punishment of victims of trafficking for offences they were compelled to commit. There is a lack of a comprehensive and coherent statistical system on human trafficking. Moreover there is still no National Referral Mechanism in Poland. The continued absence of a NRM and a coherent statistical system makes it difficult to have an accurate picture of the situation in terms of numbers of victims of trafficking.

24. There was evidence that prosecutors and judges in Poland place a restrictive interpretation on the concept of human trafficking, and , in particular an unduly narrow definition of the concept of forced labour. At paragraph 121 GRETA expressed its concern about the justice reforms in Poland having had a negative impact on the efficiency of the Polish judiciary.

25. In section 8 of the GRETA Report, the issue of "non-punishment provision" is addressed. The absence of a specific provision in Poland gives rise to a risk of differential treatment depending on the prosecutor. At paragraphs 125 to 128, GRETA reports that "Polish law still does not contain a specific provision on the non-punishment of victims of human trafficking compelled to commit unlawful acts", despite previous GRETA recommendations. The Report refers to existing provisions of the Polish Criminal Code relied upon by the Polish authorities. However GRETA noted that they do not expressly relate to individuals who are compelled to commit offences. GRETA is not aware of any examples of the application of those provisions in cases of victims of human trafficking compelled to commit unlawful activities. Officials had not provided GRETA with any cases where the non-punishment principle had been applied (paragraph 128). At paragraph 133 GRETA reiterated that the non-punishment principle is an essential cornerstone of the fight against human trafficking.

26. At the end of the Report is an additional section setting out the Polish Government's comments made in response to the GRETA Report itself and after it had been sent to the Polish authorities. The Report states expressly that those comments do not form part of GRETA's analysis in the Report. In those comments, the Polish Government responds specifically to section 8 dealing with "non-punishment provision", stating that its previous comments have not been fully taken into account. In relation to the fact that there is no general "non-punishment clause" in Poland, the Government states that such acts are assessed on a case-by-case basis by an independent court under the provisions of article 26 and article 9 of the Criminal Code and that the application of those provisions may lead to the conclusion that a person has not committed a crime. The statement continues "Persons who are staying or working in Poland against their will as a result of a trafficking crime being committed against them will therefore not be subject to criminal liability".

The report of Ms Dabrowska

27. Ms Dabrowska's evidence is that Poland does not have a specific legal regime dedicated to the identification of human trafficking victims. There are some provisions providing for such identification, and in particular article 170 Foreigners Act. However this has no impact upon the person in the event that he or she is prosecuted. (Paragraph 8). She notes the concern of GRETA that although there are provisions for access to legal assistance, many victims are not assisted by lawyers during legal proceedings or depend on lawyers working pro bono.

28. At paragraphs 12 to 18, Ms Dabrowska addresses the question of the existence of legislative provisions regarding the non-prosecution of victims of trafficking. Poland does not have a specific regime or provisions governing the matter (confirming paragraph 126 of GRETA). At paragraph 13 to 15 she sets out the fact that the Polish Authorities claim there are existing legal provisions which are sufficient to comply with the non-punishment principle. She then sets out statements by the Polish Authorities explaining that although there are no specific provisions, there are sufficient provisions to cover the position. She cites the Authorities' express statement that Poland accepts that there is no general non-punishment clause in Poland and that acts are considered individually in terms of assessing the possibility of lawful behaviour. At paragraph 14, she further refers to a manual published by the National Prosecutors Office in 2022, which states, in relation to the conduct of victims of trafficking, that prosecutors and judges should apply by extending its interpretation, the general clause on impunity provided for in the Criminal Code concerning acts committed under duress and that the use of that provision should not be discretionary when the legal requirements are met. Ms Dabrowska comments that this repeats what has been stated in Poland's initial response to GRETA in February 2021. At paragraph 15, Ms Dabrowska comments that the character of general provision means that there is a wide possibility of different interpretation of that provision.

29. At paragraph 16 Ms Dabrowska comments that this means that each case is case specific. The Polish law provisions are both very limited and discretionary. They do not relate expressly to the situation where individuals are compelled to commit offences and each will depend on assessment of the particular circumstances conducted by the prosecutor or the court.

30. At paragraph 17 she comments that unfortunately available public documents regarding the statistics on human trafficking do not contain information on the number of victims who were forced to commit crimes. She then cites paragraph 128 of the GRETA Report. The observations made by GRETA are similar to her experience.

31. At paragraph 18 she concludes that "it is not possible to assess any consistent practice in the application of the provisions that can release trafficking victims from responsibility for offences committed whilst under the control of their traffickers." In practice and in the absence of a non-punishment provision, victims may have to actively defend themselves in order to demonstrate important circumstances in court.

The Judgment

32. In the Judgment, the Judge set out the background to the case and the evidence received; to a significant extent adopting the contents of the defence skeleton argument (§8).

33. At §§24 to 37 the Judge summarised the Appellant's live evidence. In relation to the Further Information, the Appellant said he had never been questioned about trafficking, there had been no disclosure. When taken to a detention centre, he was not asked about anything else (§25). He had applied for asylum in Poland in the detention centre and he had explained to a church worker that he had been brought to Poland by a gang to help pay off a debt (§27). The Judgment continued, in relation to the Appellant's cross-examination, at §§34 to 36:

> "34. The RP was asked about his conviction in 2003 for Robbery and Fraud. …. He hadn't disclosed the pressure he was under or about Marek and Amin he said he didn't have the opportunity to. He said he was too scared to tell anyone about Dang he felt that if he did, he would be in real danger.
>
> 35. The RP was asked about his conviction in 2007 for Human Trafficking, he said he was told by Marek and Amin to pick up 12 people, in doing so he was arrested, he said he had told the police about Marek and Amin telling him to drive the people to a market but wasn't told what had happened afterwards.
>
> 36. He was asked about his 2014 conviction for Human Trafficking, he explained he was working in a market, he said he had denied being involved, voice recognition was part of the case and there was an expert involved, he said he was in prison for a few months and then released."

34. At §§38 to 41 he summarised the evidence of the defence expert, Ms Dabrowska.

35. At §§42 to 49, the Judge summarised the parties' submissions, identifying a two-stage process; first whether the Appellant is a victim of human trafficking, and secondly if so, whether it is compatible with his Article 4 and 8 rights to extradite him. At §43 he stated that he had been referred to the four considerations for determination (see paragraph 63(1) below) and to the Equal Treatment Bench Book to assess whether the Appellant is a victim of modern slavery. The Judgment continued at §§44 to 46:

> ""44. I was urged to carefully consider the RP s proof of evidence, his detailed account from as far back as 1999.The RP s responses to detailed cross examination. The naming of individuals involved the detail provided some of which was not in his interests.
>
> 45. I was referred to the supporting corroborative evidence. The external medical evidence, the extent of the injuries, consistent with the account of their mechanism inflicted upon the RP [at p100 of the bundle]. Dr Furtado's report [paras 30-31] Professor Payne-James report [para 116 onwards].The Home

> Office document [p 190] and the recognition that victims can be recruiters for new victims.
>
> 46. In summary it was submitted I have a plausible and credible account of the RP being a victim of human trafficking."

(In my judgment, the reference to recruiters at the end of §45 is a clear reference to paragraph 4.6.2 of the CPIN on Illegal Moneylenders: see paragraph 14 above.)

36. At §§50 to 53, the Judge set out his own summary of the evidence relating to non-punishment in Poland. He referred to the GRETA Report and set out substantial parts of paragraphs 7, 8 and 12 to 18 of Ms Dabrowska's report.

The Judge's assessment on Article 4

37. The Judge started his assessment of the Appellant's Article 4 case in §§55 and 56.

> "55. This was a difficult exercise to conduct and not one I have previously had to determine. The RPs case was thoroughly prepared and powerfully presented by Miss Hill. It is not submitted the RP is at risk of re trafficking but rather a risk he will be wrongfully prosecuted as a victim of HT. Whilst the UK can be regarded as a competent authority to undertake such assessments with the NRM the same is not transposed into the Polish system and individuals do not have that protection afforded to them. In light of authorities, including ***Igbinovia v President of the Criminal Division (Seccion Segunda De La Audencia Provincial De Santa Cruz De Tenerife)*** [2014] EWHC 4512 (Admin), ***Olga C v Latvia*** [2016] EWHC 2211 (Admin) (DC) and ***Grecu v Romania*** [2022] EWHC 2056 (Admin) I was satisfied that the authorities make clear that the extradition Court must make up its own mind when dealing with an issue of whether a requested person has been the victim of Modern Slavery or Human Trafficking (see ***Grecu at [45]*** and ***Igbinovia at [35]-[38]***). It is not required to adjourn to await the conclusion of an NRM process and may, as in Igbinovia, come to a contrary conclusion to that of the NRM where it has already made a reasonable grounds decision."

38. Then he turned to the first of the two issues (under the two-stage process), stating:

> "56. Firstly I have to determine whether the RP is a victim of human trafficking, has he on the balance of probabilities proved that in this case?"

39. He then addressed this first question at §§57 to 61. At §§57 to 59, the Judge set out factors in favour of the Appellant's case:

> "57. For him is the expert evidence of Dr Payne-James, the nature of the injuries inflicted and their mechanism consistent with his claim it is submitted, I accept that is powerful

> evidence, it corroborates his evidence. Less so Dr Furtado's report which although relevant to his Article 8 submissions does not necessarily support the HT claim [it supports horrific mistreatment in custody]. The RPs evidence was given in detail both within his statement and lengthy cross examination he sets out the names of individuals who have allegedly coerced him and the beginnings of the entrapment into a world of being trafficked for decades.
>
> 58.The RP lodged his pending asylum claim before he was arrested and not after.
>
> 59.The RP came across in his evidence as a mild mannered almost meek individual, it is apparent whatever his role and involvement in the OCG might be he has suffered enormously whilst incarcerated in prison, some might suggest that would not be an indicator he is at the head of a powerful organised crime group but again as stated [ante] this is far from conclusive. I have been engaged in the criminal justice system as an advocate and judge for over 30 years, sometimes individuals are able to carefully disguise their true colours."

40. Then at §§60 and 61, the Judge set out the factors <u>against</u> a finding that the Appellant is a victim of human trafficking.

> "60. Against the HT assertion the RP is a victim are the detail of the allegations within the warrant. The warrant details a **leading role**. [my emphasis] it refers to supervising and organising, securing and adapting premises for professional criminal activities. The clear suggestion is that he is closer to the top of the OCG leadership and not a foot soldier.
>
> 61. Against him is the existence of his previous convictions over the years for serious offending, in particular the convictions for Human Trafficking in 2007 and 2014, a significant gap between like offending. Whilst the RP has detailed the names of others involved and gone as far as to say he provided the authorities of their identities and involvement <u>the JA confirm in their further information no such detail has ever been provided or reported. Whilst the RP gave detailed evidence in some regards, he was notably vague about what he had reported and how it had been acted upon by the authorities.</u>" (<u>emphasis</u> added)

41. At §61 the Judge went on to state his conclusion that the Appellant was *not* a victim of trafficking in the following terms:

> "I must conclude with the relevant convictions without any suggestion of previous notification that he has been the victim of HT in those proceedings, he has not persuaded me even to

> the reduced standard that he is the victim of human trafficking."

42. As regards the second limb of the Article 4 issue and whether Poland has sufficient non-punishment provision, the Judge stated as follows:

> "62. As I do not find the RP to have been the victim of HT I do not need to consider the potential for a breach by virtue of the submitted inadequacies of the Polish criminal justice system but will do so in any event if it is determined my assessment is flawed.
>
> 63. I took on board the submissions set out above, the GRETA report and the expert evidence of Miss Dobrowska, her concession at paras 13-15 of her report, her evidence was not entirely unchallenged, Mr Cockcroft submitted her evidence did not go far enough to indicate a real risk of a breach of Article 4 rights. He submitted that no statistics were presented to evidence her assertions and it would be speculative to accept prosecutors are unable to do anything in this regard. The report does not conclude as much, her evidence identified a system in place albeit one fraught with difficulty for anyone without resources and legal representation. The RP is represented, I assume will be in Poland. Poland is a signatory to the ECHR and there is a presumption that they will conduct cases in accordance with their treaty obligations, that presumption in my mind has not been rebutted by the evidence presented." (emphasis added)

43. His overall conclusion on Article 4 was as follows:

> "64. Accordingly, I do not come to the view that the RPs article 4 rights will be interfered with and breached on a return to Poland, a return is compatible with the RPs engaged article 4 rights. The offending is serious and will likely [on conviction] result in a lengthy sentence of imprisonment, there has been no suggestion of less coercive measures which given the gravity of the offending is perhaps hardly surprising. Accordingly, within s 21A of the Extradition Act 2003 I have to take the view that it would not be disproportionate to return the RP to Poland." (emphasis added)

The Judge's assessment on Article 8

44. The Judge addressed the Article 8 ground at §§65 to 77. At §§67 to 72, he set out the factors against extradition.

> "67. [SNT]'s Article 8 right to a private life is engaged in this case. Prior to his arrest he had been living in Luton and had close contact with his cousin and her son for whom he provided childcare. He is also receiving some medical support.

> 68. Taking into account international and domestic principles relating to the proper treatment of victims of trafficking, the public interest which attaches to [SNT's] prosecution is minimal, if not non-existent.
>
> 69. Furthermore, at the date of the extradition hearing the RP will have spent 12 months in custody. This period on remand further diminishes the public interest in extradition.
>
> 70. Conversely, the likely impact on the RP if extradited is significant. In particular, by reason of the abuse he previously endured in custody in Poland as set out in Dr Furtado's report, the resulting mental-health difficulties he suffers, there is a risk of a substantial deterioration in his mental health if returned and remanded into Polish custody.
>
> 71. The seriousness of the conduct alleged has to be viewed through the prism of being trafficked and as such there is little or no public interest in returning a victim of human trafficking for prosecution. It is submitted this is a case with a unique feature the public interest aspect is the offending issues as a victim of HT particular to the RP.
>
> 72. Miss Hill conceded without the other features of this case the article 8 position would be unlikely to be persuasive."

45. At §§73 to 75 he set out the factors for extradition.

> "73. The RP is wanted by the JA for serious offences involving leading an organised crime group for financial gain, organising the production of significant quantities of cannabis and securing and adapting premises for such production to occur. The penalties on conviction are significant 10 /15 and 10 years respectively.
>
> 74. The RP has a relevant and substantial criminal record including offences of Robbery and Fraud 2003 and latterly Human Trafficking in 2007 and 2017. 8
>
> 75. There is a weighty public interest factor in honouring international treaties and affording mutual respect to the judicial authorities of foreign jurisdictions."

46. The Judge's conclusions on Article 8 were as follows:

> "76. The article 8 balancing exercise is significantly easier than the issues raised within article 4. Miss Hill as much conceded that without the finding the RP is a victim of HT the article 8 grounds here would be insufficient. I think that has to be right. Whilst the RP has clearly diagnosed mental health issues from his past experiences in custody and will lose any

> support mechanism if extradited he has a limited family and private life in the UK and a yet to be determined asylum claim [which may in due course have some impact on these proceedings] he has managed whilst being remanded in custody at HMP Wandsworth for the last 12 months and there has been no documented deterioration brought to the courts attention. It seems to me there will be some impact on the RPs mental health with the prospect of incarceration in Poland but that does not outweigh the public interest factor here, accordingly I am of the view that extradition is compatible with the RPs article 8 rights.
>
> 77. For the reasons stated [ante], the gravity of the offending alleged and likely sentence on conviction I also come to the conclusion that it would be proportionate to extradite the RP to Poland and formally order the extradition of [SNT] to Poland in accordance with s 21 A (5) of the Extradition Act 2003."

The Grounds of Appeal

47. The Appellant appeals on two grounds:

    (1) The Learned Judge was wrong to conclude that extradition is compatible with the Appellant's right to freedom from slavery and forced labour pursuant to Article 4 ECHR. He was wrong to conclude that the Appellant is not a victim of trafficking.

    (2) The Learned Judge was wrong to conclude that the Appellant's extradition is compatible with his right to a private life in the UK under Article 8 ECHR.

48. Ground 1 has two aspects. First, whether the Judge was wrong to conclude (at §61) that the Appellant was not a victim of human trafficking (Ground 1(a)); and, secondly, whether the Judge was wrong to conclude (at §64) that the presumption that Poland will comply with its ECHR obligations and in particular under Article 4, in relation to non-punishment of victims of trafficking, has not been rebutted (Ground 1(b)).

49. As regards the interaction between the Grounds, the following is common ground. First, Ground 2 depends wholly on whether the Appellant is a victim of human trafficking (Ground 1(a)). If he is, then Ground 2 succeeds on the basis that, because he is a victim of human trafficking, the Article 8 balance is clearly in his favour. Ground 1(b) similarly depends on a favourable outcome on Ground 1(a). Secondly, thus if the appeal on Ground 1(a) fails, then the appeal as a whole will be dismissed. If the appeal on Ground 1(a) succeeds, then the appeal succeeds, at least on Ground 2. It follows that, strictly, Ground 1(b) does not fall for determination and the entire appeal stands or falls on the outcome of Ground 1(a). Nevertheless I will address, briefly, Grounds 1(b) and 2.

Relevant Legal background

Section 21A and the ECHR

50. Section 21A of the 2003 Act requires the judge to examine the compatibility of extradition with the Human Rights Act 1998. By section 21A(1) of the 2003 Act, in an accusation case under Part 1, the judge is required to decide both (a) whether extradition would be both compatible with the requested person's human rights, and (b) whether it would be disproportionate having regard to specified matters listed in section 21A(3). The specified matters concern seriousness, likely penalty and the possibility of the requesting state taking measures that would be less coercive than extradition. Thus, to order extradition the judge must be satisfied that *both* (a) it would be compatible with the Appellant's human rights *and* (b) it would not be disproportionate: see section 21A(4) and (5).

51. Poland as a Member State of the Council of Europe is presumed to be able and willing to comply with its ECHR obligations, in the absence of compelling evidence to the contrary. Cogent evidence from the Council and other international bodies - something approaching an international consensus - is required to rebut that presumption: *Krolik v Poland* [2012] EWHC 2357 (Admin) at §§4 to 7.

Article 4 and Human Trafficking

52. Article 4 ECHR provides, so far as it is relevant:

> "1. No one shall be held in slavery or servitude.
>
> 2. No one shall be required to perform forced or compulsory labour."

53. The background for the UK's international obligations in respect of victims of human trafficking and forced labour is the UN "Palermo Protocol"[1], and the ECAT, moving to the 2011 Directive (2011/36/EU).

54. The Palermo Protocol sets out the use of terms for the protocol:

> "Article 3- Use of terms
>
> For the purposes of this Protocol:
>
> (a) "Trafficking in persons" shall mean the **recruitment,** transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or **other forms of coercion**, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or **of the giving or receiving of payments or benefits to achieve the consent of a** person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, **forced labour** or services, slavery or practices similar to slavery, servitude or the removal of organs;

[1] United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

> (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used."

55. Article 26 ECAT requires the signatories, including the UK to: "... provide for the possibility of not imposing penalties on victims [of trafficking] for their involvement in unlawful activities, to the extent that they have been compelled to do so".

56. In interpreting Article 4 in line with the above international obligations, Article 4 carries with it positive obligations upon the signatory States. In *CN v United Kingdom* (2013) 56 EHRR 24 at §§70 to 82, the European Court of Human Rights found that this included an obligation to investigate allegations of forced labour adequately. In *VCL & AN v United Kingdom* (2021) 73 EHRR 9 at §§159 to 162, the Court ruled that 'non-punishment' for victims of trafficking is a material aspect of Article 4 protection.

The domestic mechanisms in criminal cases

57. Section 45 of the Modern Slavery Act 2015 provides a statutory defence for victims of human trafficking who have been forced, threatened or deceived into committing certain crimes by their exploiters. The CPS has published guidance on the correct approach where suspects in a criminal case may be victims of trafficking. This affirms that their circumstances may amount to a reason not to prosecute, mitigation or mere excuse (*R v L* [2013] EWCA Crim 991; [2013] 2 Cr App R. 23). The domestic position was further analysed in *R. v AAD* [2022] 1 WLR. 4042 when the Court accepted that, following *VCL* States have an obligation to establish an authority to determine who is a Victim of Trafficking, and not to prosecute those who are determined to be victims unless there are good reasons, consistent with ECAT, for doing so.

The test in removal cases

58. In *MS (Pakistan) v Secretary of State for the Home Department* [2020] UKSC 9; [2020] 1 WLR 1373 at §§34 and 35 the Supreme Court (in an immigration context) held that where an individual's removal would result in the operational aspects of Article 4 being breached, such removal will be incompatible with Article 4 (even where there is no risk of future re-trafficking).

The approach on appeal from the District Judge

59. An appeal against the decision of a district judge may be brought on a question of law or fact: section 26(3) of the 2003 Act. The court may allow the appeal if the district judge ought to have decided a question before him at the extradition hearing differently: section 27(3)(a). Thus, in the present case, on Issue 1(a), the question for this Court is whether the Judge ought to have found that the Appellant is a victim of trafficking.

60. As regards the correct approach to be applied by this Court in relation to findings of fact, I have not been referred to any authority where this issue has arisen directly in the context of an appeal against a district judge's finding of primary fact.

Nevertheless, I have been referred to the well-known case of *Polish Judicial Authority v Celinski* [2016] 1 WLR 551 at §§19 to 24 and also to *Henderson v Foxworth Investments Ltd* [2014] 1 WLR 2600 at §§58 to 68 (esp §67) (dealing with the position of appeal on facts more generally). I have also been referred, by way of examples, to *JK v Poland* [2018] EWHC 197 (Admin) at §§39 to 41 and *Arkadiusz Rozwens v Circuit Court in Lodz, Poland* [2024] EWHC 624 (Admin) at §51 (in relation to the respect accorded to a Judge's findings of fact in an extradition appeal). On the basis of these authorities, I derive the following propositions:

(1) In an extradition case, findings of facts are to be distinguished from value-judgment findings on proportionality: *Celinski* at §§20 (ii) and 24.

(2) Findings of fact especially if evidence has been heard, must *ordinarily* be respected: *Celinski* §24.

(3) The ultimate test is that a finding of fact may be challenged if it was a finding which no reasonable judge could have reached on the evidence: *Celinski* §20 (ii) (citing *Belbin* at §66).

(4) Circumstances in which an appellate court may interfere with a finding of fact, include material error of law, a finding for which there is no evidence, demonstrable misunderstanding of relevant evidence or demonstratable failure to consider relevant evidence: *Henderson* §67.

(5) The appellate court should think very carefully about the advantage which the trial judge had of having seen and heard witnesses giving evidence. That advantage, and the trial judge's view as to credibility, are to be given great weight. Nevertheless the appellate court can depart from the trial judge's view where that advantage could not be sufficient to explain or justify his or her conclusion. *Celinski* §21 (citing Lord Neuberger in *In re B (A Child)* at §94) and *Henderson* at §§63 to 65.

Ground 1: Article 4 ECHR

The parties' submissions

The Appellant

61. The Appellant submits that the Judge erred in finding that the Appellant is not, on the balance of probabilities, a victim of human trafficking. He failed to have any or adequate regard to the consistency of the Appellant's account with objective extraneous evidence and in turn its plausibility. He also wrongly relied on the Appellant's uncertainty regarding interactions with the criminal justice system in Poland. In this regard his reasoning was flawed, such that his ultimate finding of fact on this issue was wrong.

62. Secondly, the Appellant submits that the Judge was wrong to conclude that non-punishment provisions in Poland are adequate on the basis of a presumption of compliance. The Judge afforded insufficient weight to the evidence rebutting this presumption and erroneously applied a proportionality test. Further the Appellant submits that to extradite the Appellant to Poland will breach the UK's own positive

obligations pursuant to Article 4 and, as such, will be incompatible with Article 4 within the meaning of the Human Rights Act.

63. As to *Ground 1(a)*, Ms Hill further submits, in summary, that the Judge did not engage with key elements of the evidence.

(1) As submitted before the Judge, witness credibility should be assessed by reference to four features: sufficiency of detail, internal consistency, external consistency and plausibility: see, by analogy with the principle in asylum and protection appeals, KB & AH (credibility – structured approach) Pakistan [2017] UKUT 491 (IAC).

(2) In a case such as this under Article 4, anxious scrutiny is required. However the Judge did not engage with the issues. On the contrary, large parts of the Judgment are "cut and pasted" from Ms Hill's skeleton before him. The reasons did not engage with the submissions made by the Appellant.

(3) The Judge failed to consider material facts and there was no analysis of the objective evidence, namely the CPINs, the Equal Treatment Bench Book and the Statutory Guidance. He failed to pay any or any adequate regard to the consistency of the Appellant's evidence with that extraneous information. He failed to have regard to the Appellant's vulnerability and diagnosis with PTSD (as per Dr Furtado). The objective evidence shows striking parallels with the Appellant's claim which, when taken together with the medical evidence of Dr Payne-James, the timing of the Appellant's asylum claim and his internal consistency should have compelled a conclusion that the Appellant is a victim of trafficking.

(4) In relation to the Judge's reliance (at §61) on the Appellant's vagueness about his previous engagement with the authorities, it is to be expected that a victim of human trafficking would not necessarily report to the authorities, and, further, that, as someone with PTSD, he might be vague in his evidence to the Court. The fact that the Polish authorities have no record does not mean that this did not happen. In this regard the Judge failed to take account of the Equal Treatment Bench Book. Moreover, the fact of having been convicted himself of human trafficking does not undermine the Appellant's claim that he himself was a victim of trafficking.

64. As to *Ground 1(b)* the Appellant submits, in summary, as follows:

(1) At §64 of the Judgment, the Judge applied the wrong test when assessing the adequacy of non-prosecution provisions in Poland. The factors identified as relevant to proportionality have no bearing upon the question under Article 4.

(2) The Judge was wrong to conclude that the Appellant had presented insufficient evidence to rebut the presumption of compliance with the ECHR. The uncontradicted evidence of Ms Dabrowska demonstrates that there is a real risk that a victim of trafficking returning to Poland will face punishment for criminality committed under the coercion of his traffickers without the proper considerations being reviewed. This offends Article 4. Moreover, her evidence

was entirely consistent with the findings of GRETA, a Council of Europe body with international standing.

(3) Poland is currently subject to multiple adverse decisions by the ECHR and CJEU in respect of their courts. (See *Niziol v Poland* [2023] EWHC 3252 (Admin) at §§59 and 60 , citing *Wozniak v Pola*nd [2012] EWHC 2557 (Admin)). The Judge was wrong to conclude that he could rely upon a presumption of compliance with ECHR obligations.

(4) Finally, the Judge should have considered the UK's own international obligations given that the Appellant was trafficked into the UK and a referral to the NRM has been made. Given Poland's approach to its obligations pursuant to ECAT and the need for cooperation it is unrealistic to consider that the UK could meet its own operational obligations in respect of the Appellant if he is extradited.

The Respondent

65. As regards *Ground 1(a),* the Respondent submits that, in relation to whether there is a real risk of a breach of Article 4, the Judge referred in the Judgment to the relevant objective evidence. That the Judge failed to consider adequately or at all this objective evidence (or that he failed to adopt the sensitive approach required in such a case) is a submission without foundation. There is nothing to suggest that he did not apply "anxious scrutiny". Rather, notwithstanding the objective evidence, and the sensitive approach required, at §§57 to 61 the Judge found, and for the reasons he gave was entitled to find, against the Appellant being a victim of trafficking on the balance of probabilities. This is not a case where the judge has overlooked the objective evidence, but rather one where he has, for good reason, disbelieved the requested person. The conclusions at §§57 to 61 were reasonable ones to draw from all the written evidence and having heard from the Appellant himself at considerable length in cross-examination.

66. As regards *Ground 1(b)* and non-punishment in Poland, in any event, as the Judge found, there was insufficient evidence to rebut the strong presumption that Poland would comply with Article 4 (applying the test in *Krolik*). First, as the Judge found, it was reasonable to assume that the Appellant would be represented in Poland. Secondly Ms Dabrowska conceded that she had not been able to assess a "*consistent practice in the application of* [non-punishment] *provisions*" – she was, for example, unable to furnish the court with any statistics. Thirdly, such provisions as existed in Poland, Ms Dabrowska said, were invoked in "*exceptional circumstances*", a position not unlike that in this jurisdiction. Thirdly, §64 of the Judgment indicates that (however confusingly structured) the judge's observations on the seriousness of the offending and proportionality were made in relation to s.21A of the Extradition Act 2003, not Article 4. Finally, reliance is placed on the Polish Government's response to the GRETA Report, as setting out the accurate position in Poland: see paragraph 26 above.

Discussion

Ground 1(a)

67. Since the outcome of the appeal turns on Ground 1(a), I deal with it first. (It is common ground that I should decide this issue, regardless of the outstanding reference to the NRM and asylum claim (see also Judgment §55)).

68. First, as regards the suggestion that the Judge simply "did not engage" with the issues, whilst the structure of the Judgment (and in particular the reproduction of significant parts of the Appellant's skeleton) might give rise to an appearance that he did not properly turn his mind to the issues, I do not accept this contention. First, the Judge himself expressly acknowledges (at §8 of the Judgment) that he is "adopting [the skeleton] as an overview before dealing with his evidence". Secondly, as Ms Hill accepts, all of her arguments made to this Court were made to the Judge, who was referred to all the relevant evidence. Thirdly, in the Judgment, the Judge both identifies the relevant evidence and acknowledges the arguments made. In particular he refers to the fact and, specific parts of the content, of the CPINs (at §§11 to 13 and 45), the Home Office Statutory Guidance (at §§20 and 45) the Equal Treatment Bench Book and the four factors for assessing credibility (at §43), the reports of Dr Furtado (at §§9 and 45) and Professor Payne-James (at §§10, 14, 45 and 57) In my judgment there is no reason to believe that the Judge did not give due consideration to the evidence and those arguments. The mere fact that that he does not recite, in the Judgment, the evidence and the argument in their full and complete detail does not mean that he did not consider and take them into account. Moreover, the Judge set out a detailed summary of the Appellant's oral evidence (at §§24 to 41). It is clear from §55 that the Judge gave the issue careful consideration; the issue was difficult and he did not lightly dismiss the strength of the Appellant's case.

69. Secondly, the issue was one of fact and was ultimately a question of credibility and whether the Judge believed the Appellant's account of how he had come to Poland, what he had done in Poland and why.

70. Thirdly, at §§57 to 61 the Judge gave his considered reasons for coming down, on the balance of probabilities, against a finding of human trafficking. At §§60 and 61 he gave four reasons for not accepting the Appellant's account: first, the detail of the allegations in the AW and the description of the Appellant has having a leading role in an OCG; secondly, the Appellant's previous convictions for serious offending, in particular for human trafficking and the significant gap between like offending; thirdly, the evidence of the Judicial Authority that no detail of others involved has been provided or reported by the Appellant; and fourthly, the fact that the Appellant himself in evidence had been "notably vague" about *what* he had reported and how it had been acted upon. (I note that, according to §61 it is not suggested that he was vague about identifying the names of those involved).

71. Fourthly, applying the approach set out in paragraph 60 above, the question for this Court is whether there are grounds to depart from the principle that the findings of fact must ordinarily be respected. In this regard, in the Judgment, there was no relevant material error of law and no finding for which there was *no* evidence. Nor am I satisfied that the Judge misunderstood relevant evidence. As set out above, it is clear from the Judgment that he did consider all the relevant evidence. Rather the challenge is to his assessment of that evidence.

72. As regards the significance of oral evidence, in a case turning on credibility, the benefit of seeing and hearing the oral evidence of that account is significant. Not only

have I not seen or heard the Appellant give evidence, but, significantly, I do not even have a transcript of that evidence from which not only could I see the full extent of that evidence, but also could glean an impression of the manner in which it was given. As a result, and whilst I accept that at §59 of the Judgment, the Judge somewhat discounts the significance of demeanour, I am not in a position to assess the Appellant's oral evidence overall, nor, in particular to judge whether the Judge's assessment of the Appellant's evidence (or some part of it) as being "vague" is justified or not.

73. For these reasons I am not able to conclude that, on the balance of probabilities, the Appellant is a victim of human trafficking and that the Judge ought to have decided that he is such a victim.

Ground 1(b)

74. In the light of my conclusion on Ground 1(a), this does not arise for determination and for that reason I express no final concluded view on an issue of such general importance. On the one hand, I bear in mind the need for strong and compelling evidence of high authority in order to rebut the presumption of compliance with ECHR obligations. On the other hand, there are here powerful arguments to support the conclusion that the Judge ought to have decided this question differently, namely that Poland does not have sufficient non-punishment provision to comply with its obligations under Article 4. I note in particular the strong evidence provided by the GRETA Report, the principal body responsible for monitoring ECAT. Further Ms Dabrowska's report of her experience is consistent with the GRETA Report. The Judge's apparent reliance on lack of statistical support in her evidence is undermined by the unavailability of statistics due to the fact, as reported by GRETA, that Poland itself does not record accurate statistics. Moreover, the Judge's own reasoning (at §64) does not clearly separate the questions under section 21A of compatibility with Article 4, on the one hand, and proportionality, on the other.

Conclusion on Ground 1

75. In the light of the conclusion at paragraph 73 above, Ground 1 fails.

Ground 2 – Article 8

76. As explained in paragraph 49 above, it is common ground that in fact this ground does not arise for separate determination. If the Appellant had been found to be a victim of human trafficking, then, the factors identified by the Judge in §§68 and 71 of the Judgment would mean that the Article 8 balance would have come down firmly in favour of the Appellant. On this basis, the public interest in extraditing the Appellant for prosecution would have been very significantly reduced. However in view of my conclusion on Issue 1(a), those factors do not apply. As a result, and taking out of the balance the factor of him being a victim of human trafficking, for the reasons given in §§73 to 76 of the Judgment, extradition is compatible with the Appellant's Article 8 rights and Ground 2 fails.

Conclusions

77. In the light of my conclusions at paragraphs 75 and 76 above, I am not satisfied that the Judge's conclusion was wrong and this appeal is dismissed.

78. I shall hear the parties as to the form of the order, costs and any other consequential matters that may arise. Finally, I am grateful to counsel for their assistance and for the detail and quality of the argument placed before the Court.