Neutral Citation Number: [2025] EWHC 925 (Admin)

Case No: AC-2023- LON-002411

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/04/2025

Before:
Mr Justice Dexter Dias

- -

Between:

SLP	**Applicant**
(anonymity order granted 22 January 2025)	
- and -	
PROSECUTOR GENERAL OF THE REPUBLIC OF LATVIA	**Respondent**

- -
- -

Benjamin Seifert (instructed by **Birds, Solicitors**) for the **Applicant**
Thomas Williams (instructed by **CPS Extradition Unit**) for the **Respondent**

Hearing date: 8 April 2025
(*Judgment circulated: 9 April 2025*)

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MR JUSTICE DEXTER DIAS

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Mr Justice Dexter Dias:

1. This is the judgment of the court.

2. To assist the parties and the public to follow the court's line of reasoning, the text is divided into six sections, as set out in the table of contents above. The table is hyperlinked to aid swift navigation.

I. *Introduction*

3. This is an appeal in extradition proceedings.

4. A "rolled-up" hearing was listed before the court, as ordered by Julian Knowles J on 29 April 2024, after he determined that the issues were "sufficiently complex" to warrant such a hearing.

5. Permission to appeal is sought by a Latvian national in whose favour I have granted an anonymity order. He is the requested person, and his name is anonymised as SLP ("**the applicant**"). The respondent in the appeal is the Prosecutor General of the Republic of Latvia, acting on behalf of the requesting state ("**the respondent**"). The applicant is represented by Mr Seifert of counsel; the respondent by Mr Williams. The court is grateful to

both counsel for their invaluable and admirably succinct assistance, both orally and in writing.

6. Permission is applied for to appeal under section 26 of the Extradition Act 2003 ("EA 2003" or "the Act" – all references hereafter to sections to this statute unless contrary indicated). The applicant seeks to reverse an extradition order made on 21 August 2023 by the court below that ordered SLP's extradition to Latvia. It was the decision of District Judge Leake ("**the Judge**") sitting at the Westminster Magistrates' Court. His order was made under section 21A(5). The appeal is solely based on an article 8 challenge. The submission is that the Judge ought to have decided differently and concluded that the applicant's enforced return to Latvia is a disproportionate interference with his article 8 rights and thus incompatible with the European Convention on Human Rights ("ECHR").

7. Since the warrant was issued after the United Kingdom withdrew from the European Union, the applicable framework is the Trade and Cooperation Agreement ("TCA"). These are Part 1 proceedings under the EA 2003 as Latvia is a Category 1 territory and the warrant a Part 1 warrant.

8. The principal question in the substantive extradition proceedings is framed by the Judge in this way:

> "whether extradition would be compatible with articles 4 and 8 of the European Convention on Human Rights, there being a claim by the requested person that the conduct amounting to the alleged extradition offence arose because he was a victim of slavery/trafficking in Latvia."

9. The Judge determined that there was no risk of a breach of article 4 and that extradition would not be incompatible with the requested person's article 8 rights. There was a preliminary dispute between the parties. It was whether the rolled-up hearing listed for 8 April 2025 should have been further adjourned to await a CG decision from the Single Competent Authority ("SCA") under the NRM. In the United Kingdom, the Home Office (more accurately, a part of it) acts as the SCA to identify and support victims of trafficking and slavery in furtherance of the nation's international treaty obligations.

10. I ruled against the adjournment application, a determination that required an analysis of the status of CG decisions, and indeed section 61 of the Nationality and Borders Act 2022. The corresponding judgment was handed down on 14 February 2025 as [2025] EWHC 298 (Admin) and simultaneously released to the National Archives (the "**adjournment judgment**"). The instant judgment should be read in conjunction with that previous decision.

II. ***Brief facts***

11. The applicant is 47 years old and hails from the Latvian Roma community. He states that he became involved in an organised crime gang in Latvia and became a target of the gang when he incurred a debt he could not repay. He began working for the illicit organisation, which he describes as the "Russian Mafia". He made deliveries for the gang, stating that he did not know the contents of the packages he was delivering. He was arrested by the Latvian police and after two months in custody was granted bail on condition he did not leave Latvia. After what he said were further threats, he left Latvia in October 2021 and came to the United Kingdom, where his mother lives.

12. A Part 1 arrest warrant was issued on 19 October 2022. It was certified by the National Crime Agency on 21 October 2022. Relevant details of the most serious offence detailed in the warrant, suitably redacted to maintain the applicant's anonymity, are:

Description of offence	Unauthorised manufacture, acquisition, storage, transportation and forwarding of narcotic and psychotropic substances for the purpose of disposal and unauthorised disposal (Offence involving large amounts of narcotic or psychotropic substances)
Penal provision	Section 253(3) of the Criminal Law
Maximum sentence	Liberty deprivation for 5 and up to 15 years
Particulars of alleged conduct	"[SLP], in circumstances, place, time and manner not exactly established during the pre-trial investigation, but no later than before 10 March 2021, illegally acquired in large amount with resale purpose 105,2953 g of a mixture of substances that contains the narcotic substance carfentanil in any amount (group of substances "Acetylfentanyls"). On 10 March 2021 at about 13.20 o'clock, [SLP], in order to implement his criminal intent to resale the narcotic substance illegally, for the purpose of self- enrichment, in Riga at *XXXXX*, illegally, in large amount, resold 2,5771 g of the mixture of substances that contains the narcotic substance … to a person engaged into a special sting investigation operation for 150 EUR, after that he was detained. Another part of the mixture of substances that contains the narcotic substance – carfentanil …, namely, 102,7182 g, that shall be regarded as large amount, [SLP] with resale purpose was illegally storing in his place of residence in Riga, at *XXXXXX* until 10 March 2021, 14.00-15.50 o'clock, when the abovementioned prohibited substance was found and seized during an authorised search …."

13. There are further allegations of cannabis manufacture and trafficking and laundering the proceeds of crime.

14. On 31 October 2022, the applicant was arrested in the United Kingdom and appeared before the Westminster Magistrates' Court on 1 November. He was granted conditional bail and released from remand on 12 December 2022. Following an initial negative RG decision on 10 March 2023, he received a positive RG decision on 2 August 2023. The court below ordered his extradition on 21 August 2023 and the applicant filed his notice of appeal the next day. He says that he fears being killed if returned to prison in Latvia. While the applicant has no convictions in the United Kingdom, he has a conviction in Latvia from 2013 when he received a sentence of 5 years and 6 months for drug trafficking. The Latvian judicial authority provided further evidence that the drugs seized had been tested and verified by expert examination.

15. Following the Judge's order on 21 August 2023 that the applicant be extradited to Latvia, the applicant made various disclosures about his mental health. This culminated in the preparation of a report dated 13 March 2025 by Dr Vicky Hoggard, a clinical psychologist. Dr Hoggard diagnosed the applicant with PTSD and depression.

16. There is a fresh evidence application in respect of Dr Hoggard's report.

III. ***Issues***

17. Since this is a rolled-up hearing, the applicant first requires permission to appeal. Should he be granted permission by the court, the question is then whether extradition order should be quashed. As the applicant submits, the appeal "is solely on the basis of article 8". To resolve the section 26 question, the parties invite the court to determine two foundational issues:

> **Issue 1**: Fresh evidence application (Dr Hoggard's report);
>
> **Issue 2**: (Fresh) article 8 balancing exercise (section 21A).

IV. ***Legal framework***

18. The starting-point is the European Convention on Human Rights ("ECHR"). Article 4 ECHR provides:

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

19. Of further relevance is article 8 of the ECHR:

> **"ARTICLE 8**
>
> ***Right to respect for private and family life***
> 1 Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2 There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

20. The Council of Europe Convention on Action against Trafficking in Human Beings ("ECAT") was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005. It was ratified by the United Kingdom on 17 December 2008 and came into force on 1 April 2009. Article 4(a) defines "human trafficking" as:

> "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."

21. In response to its international treaty obligations, the United Kingdom established the NRM. First responders, such as police officers or social workers, who suspect that a person may be a victim of trafficking refer the case to the Home Office, as the SCA under the Convention, for investigation. Officials first decide whether there are reasonable grounds to believe that the person may be a victim. A "reasonable grounds" ("RG") decision should be reached by the SCA within a target of 5 days, the standard for such a determination being "I suspect but cannot prove". After the RG decision, the person is granted a 30-day "recovery and reflection period". The aim is for the third stage, the CG decision, to be provided within that 30-day period. The conclusive decision is made on the balance of probabilities.

22. In *Polish Judicial Authority v Celinski & Ors.* [2015] EWHC 1275 (Admin) ("*Celinski*"), the Divisional Court considered the impact on extradition proceedings of ECAT and the European Union Trafficking Directive on preventing and combatting trafficking in human beings and protecting its victims (Directive 2011/36/EU). The court also

reviewed the nature and quality of CG decisions. Lord Thomas CJ in delivering the judgment of the court, explained at paras 51-52:

> 51 "In December 2008, the UK ratified the Council of Europe Convention on Action against Trafficking; it came into force on 1 April 2009; effect is given to several of its provisions by the Modern Slavery Act 2015. The UK has also opted into the EU Trafficking Directive: Parliament and Council Directive 2011/36/EU of 5 April 2015 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework decision 2002/629/JHA (OJ 2011 L101, p 1). Neither the Convention nor the Directive provides any bar to extradition. The decision of the competent authority that a person has been trafficked is not in any way binding on a district judge.
> 52 A district judge, having heard the evidence, must therefore himself determine the issue as to whether the requested person has been trafficked, having been assisted by the Crown Prosecution Service and the UKHTC by provision of the relevant evidence in their possession, subject to principles of public interest immunity from disclosure. Judges should not normally adjourn hearings for a referral to the UK competent authority, nor defer the effect of their extradition decisions pending a decision on a referral by the UK competent authority."

23. The court in *Celinski* referred to *In re B (A Child)* [2013]1 WLR 1911, where Lord Neuberger stated at para 89:

> ". … If, after reviewing the judge's judgment and any relevant evidence, the appellate court considers that the judge approached the question of proportionality correctly as a matter of law and reached a decision which he was entitled to reach, then the appellate court will not interfere. If, on the other hand, after such a review, the appellate court considers that the judge made a significant error of principle in reaching his conclusion or reached a conclusion he should not have reached, then, and only then, will the appellate court reconsider the issue for itself if it can properly do so (as remitting the issue results in expense and delay, and is often pointless)."

24. More recently the Supreme Court revisited this question in *In re H-W (Children)* [2022] 1 WLR 3243. The court said at para 49 that "the appellate court's function is accordingly, as explained in *In re B*, to review [the judge's] findings, and to intervene only if it takes the view that he was wrong." The Supreme Court continued at para 51 that:

> "on this appeal the real issue is not whether the appellate court is satisfied that the judge reached a conclusion which was wrong. The question is rather concerned with the adequacy of the judge's process of reasoning in reaching his conclusion."

25. In *Koceku v Albania* [2024] EWHC 1028 (Admin), Julian Knowles J considered the value of a CG decision. In that case, the content of the decision was confined to "it is accepted that you were a victim of modern slavery in the UK during approximately 2019" (para 29). Julian Knowles J said at para 43:

> "I agree with [counsel] in relation to the Conclusive Grounds decision in the Appellant's favour. However such decisions are properly to be regarded (and I set out the case law earlier), the decision in this case is simply too brief to be of any assistance. It is the opinion of a civil servant expressed in one line, which even despite its brevity appears to be inconsistent with the case which the Appellant advanced before the district judge. It is certainly nowhere near decisive, and I decline to admit it. I cannot readily see how what happened (or did not happen) in the UK after his arrival here can have any bearing on the question of whether extradition would be Article 8 disproportionate."

26. It is clear from his words "However such decisions are properly to be regarded" that Julian Knowles J did not decide that CG decisions are inherently inadmissible or can never be admitted in extradition proceedings. Further, his decision was highly fact-sensitive. Therefore, the decision has limited relevance to the facts of this case. My analysis of the status of CG decisions can be found in the adjournment judgment, reduced to a series of propositions at para 27:

> (1) A conclusive grounds decision is made under the National Referral Mechanism by an official in the Single Competent Authority, which is a part of the Home Office;
>
> (2) The decision is a paper-based decision made on a balance of probabilities;
>
> (3) It answers the question whether the official can determine to the civil standard whether the person is or is not a victim of trafficking or slavery;
>
> (4) The decision does not bind a court in any way;
>
> (5) A court will decide for itself whether the person is or is not a victim of trafficking or slavery and may decide differently to the SCA official;

> (6) The court should not normally delay extradition proceedings to await referrals to the NRM or decisions by the SCA under it;
>
> (7) Normally does not mean never: each adjournment decision is fact-specific and evidence-based;
>
> (8) However, the policy of the European Framework Decision, as now substantially reflected in the Trade and Cooperation Agreement, is for extradition proceedings to be summary and streamlined and delay must have clear justification (see, for example, stipulated time limits in article 17 of the Framework);
>
> (9) Neither ECAT nor the European Union Trafficking Directive (Parliament and Council Directive 2011/36/EU) provide any bar to extradition.

V. ***Discussion***

27. I examine each of the two foundational issues in turn, before turning to the overall disposal of the case in the final section.

A. Issue 1: Fresh evidence

28. The only documented evidence of the applicant reporting issues with his mental health relates to his reports made after extradition was ordered by the Judge on 21 August 2023, although he mentioned after that date having experienced difficulties before it. The applicant's skeleton argument outlines the chronology helpfully and I need not for now outline the dates in detail. The key point is that this issue was raised for the first time after the extradition order. The applicant's involvement with support services postdates the order. He was referred to Rebuild in March 2024. The therapy team confirm that he has been receiving and benefitting from counselling services and has been prescribed citalopram. I also note the letter from Joe Burtwell about the high depression and anxiety scores the applicant was assessed with. Mr Burtwell confirms a significant improvement following treatment (letter of 27 November 2023).

29. As noted, the applicant now seeks to adduce Dr Hoggard's report as fresh evidence. The applicant submits that it was "reasonable for him not to report his mental health difficulties before". Against this, the respondent submits that the question is not whether it is reasonable for his solicitors to have raised this issue, but whether it was reasonable for the applicant to have done so.

30. The proper approach to fresh evidence is settled, where section 25 rather than article 8 is relied on. The statutory conditions under section 27(4) of the 2003 Act are:

> "(4) The conditions are that—
>
> (a) an issue is raised that was not raised at the extradition hearing or evidence is available that was not available at the extradition hearing;
>
> (b) the issue or evidence would have resulted in the appropriate judge deciding a question before him at the extradition hearing differently;
>
> (c) if he had decided the question in that way, he would have been required to order the person's discharge."

31. Section 27(4) was notably considered by Sir Anthony May P in *Szombathely City Court, Hungary v Fenyvesi* [2009] EWHC 231 (Admin) ("*Fenyvesi*") at paras 28 to 35. I summarise the *Fenyvesi* approach:

> (1) At para 32, the court said evidence which was "not available at the extradition hearing" is evidence which "either did not exist at the time of the extradition hearing, or which was not at the disposal of the party wishing to adduce it and which he could not with reasonable diligence have obtained";
> (2) However, at paras 34-35, the court cautioned against rigidity of approach may need where "what might otherwise be a breach of the European Convention on Human Rights may be avoided by admitting fresh evidence" where such evidence is "decisive".

32. *Fenyvesi* was considered by the Supreme Court in *Zabolotnyi v Mateszalka District Court, Hungary* [2021] UKSC 14 where at paras 57-58 the court confirmed that section 27(4) operates "not a rule of admissibility but a rule of decision". The consequence is that the power to admit fresh evidence on appeal "will be exercised as part of the inherent jurisdiction of the High Court to control its own procedure", provided that it is in the interests of justice to do so, having regard to the animating policy of the 2003 Act was that "extradition cases should be dealt with speedily and not delayed by attempts to introduce on appeal evidence which could and should have been relied upon below".

33. To my mind, these considerations are of prime importance in this case. Working through section 27(4), I conclude the following:

> (1) Even taken at its highest, I do not judge the evidence of Dr Hoggard to be "decisive" of any statutory bar to extradition, although relevant to an article 8 balancing exercise.
> (2) While her evidence did not exist at the time of the extradition hearing, evidence about the applicant's mental health could with reasonable diligence – and those are the

statutory words – have been "obtained" for that hearing. Of significance is that in his telephone contact with Trent therapeutic services on 17 October 2023, the applicant stated that he had been experiencing anxiety and depression from 2021 and claimed to have experienced suicidal thoughts "6 to 8 months ago", and therefore before the decision in August 2023 and the beginning of the hearings below in June 2023. It was undoubtedly open to him to raise these concerns at the hearing below. He did not.

(3) While the applicant submits that the applicant "could not have reasonably have made his mental health reports earlier", no convincing explanation is provided why that is the case. Significantly, he referred himself Trent PTS on 3 July 2023: after the extradition (evidential) hearing but before the final hearing at which oral submissions were made.

(4) Thus the applicant's submission that "none of this evidence could possibly have been adduced at first instance" and it is therefore "plainly fresh evidence" fails to engage with the obvious fact that it was open to the applicant to have raised the question of his mental health before the hearing below and to have alerted the court to an issue about it during those proceedings. None of this happened.

(5) Instead, the fact that first material disclosures followed the court's extradition order raises serious and significant questions about the nature of the claims, particularly since the psychological report has depended on his self-reports and was undertaken in the absence of any relevant medical records. While the respondent, fairly, does not challenge the diagnoses of Dr Hoggard, these puzzling features of the reporting history, to my mind, must affect the weight that can reliably be attached to this evidence.

(6) I cannot think that the Judge (the "appropriate judge") would have decided the case differently if Dr Hoggard's report was before him.

(7) The applicant's discharge would not have been "required".

34. Therefore, I do not grant permission to admit the evidence as fresh evidence. Nevertheless, I am prepared, as indicated to counsel at the oral hearing, to consider the implications of the report in any event. There are two aspects to the question of mental health relevance. First, about suicidality. Second, about the significance of mental health impairment short of that.

35. First, on suicidality. The proper approach was set out in *Turner v Government of the USA* [2012] EWHC 2426 (Admin) at paragraph 28 and the seven propositions set out there by Aikens LJ:

> "Proposition (1) The Court has to form an overall judgment on the facts of the particular case.
>
> Proposition (2) A high threshold has to be reached in order to satisfy the court that a requested person's physical or mental condition is such that it would be unjust or oppressive to extradite him.
>
> Proposition (3). The Court must assess the mental condition of the person threatened with extradition and determine if it is linked to a risk of a suicide attempt if the extradition order were to be made. There has to be a 'substantial risk that the Appellant will commit suicide'. The question is whether, on the evidence the risk of the Appellant succeeding in committing suicide, whatever steps are taken is sufficiently great to result in a finding of oppression.
>
> Proposition (4). The mental condition of the person must be such that it removed his capacity to resist the impulse to commit suicide, otherwise it will not be his mental condition but his own voluntary act which puts him at risk of dying and if that is the case there is no oppression in ordering extradition.
>
> Proposition (5). [The Court asks:] On the evidence, is the risk that the person will succeed in committing suicide, whatever steps are taken, sufficiently great to result in a finding of oppression?
>
> Proposition (6). [The Court asks:] Are there appropriate arrangements in place in the prison system of the country to which extradition is sought so that those authorities can cope properly with the person's mental condition and the risk of suicide?
>
> Proposition (7). There is a public interest in giving effect to treaty obligations and this is an important factor to have in mind."

36. Once the proper approach is taken, it is clear why counsel was not only realistic but right not to advance an unjustness or oppression because of suicide risk argument. There is no substantial risk; the "high" threshold has not been reached. Indeed, the applicant himself states that he has come to realise that committing suicide would be "a cowardly and foolish thing to do" (para 17). But that is not the end of the matter.

37. Second, therefore, I turn to other residual mental health impairments, which is not for a moment to diminish the potential impact on everyday life of a person suffering from diagnosed mental health conditions short of suicidal tendencies.

38. However, if the section 25 test is not on its own met, then any mental health condition may nevertheless be of relevance to the article 8 balancing exercise. I accept such submission, made in accordance with *Debiec v District Court of Piotrkow Trybunalski, Poland* [2017] EWHC 2653 (Admin), a judgment of Julian Knowles J. and also by the same judge in *Cash v Court of First Instance, Strasbourg, France* [2018] EWHC 579 (Admin) ("*Cash*"). In *Cash*, the court ruled at para 1 that "it would be unjust and oppressive to extradite the Appellant because he is currently unfit to stand trial and is seriously mentally ill with paranoid schizophrenia, and thus the judge should have decided that extradition is barred by s 25 of the Extradition Act 2003."

39. Section 25 of the EA 2003 provides:

> "25 Physical or mental condition
> (1) This section applies if at any time in the extradition hearing it appears to the judge that the condition in subsection (2) is satisfied.
> (2) The condition is that the physical or mental condition of the person in respect of whom the Part 1 warrant is issued is such that it would be unjust or oppressive to extradite him.
> (3) The judge must—
> (a) Order the person's discharge, or
> (b) Adjourn the extradition hearing until it appears to him that the condition in subsection (2) is no longer satisfied."

40. Dr Hoggard states that the applicant's mental health would need support on return. I note that there is no evidence about the likely treatment and support facilities available in Latvia for the applicant's mental health. However, there need not be. The position was helpfully set out by Fordham J in *Farookh v Judge of the Saarbrucken Regional Court (Germany)* [2020] EWHC 3143 (Admin). While examining the evidential situation in respect of suicidality, the analysis is plainly of value for the same reasons in respect of other concerns about mental health. Fordham J said at para 5:

> "As the Divisional Court explained at paragraph 10(iii) of Wolkowicz: "when the requested person is received by the requesting state in the custodial institution in which he is to be held, it will ordinarily be presumed that the receiving state within the European Union will discharge its responsibilities to prevent the requested person committing suicide, in the absence of strong evidence to the contrary… In the absence of evidence to the necessary standard that calls into question the ability of the receiving state to discharge its responsibilities or a specific matter that gives cause for concern it should not be necessary to require any assurances from requesting states within the European Union. It will therefore ordinarily be sufficient to rely on the presumption." The Court went on: "It is therefore only

> in a very rare case that a requested person will be likely to establish that measures to prevent a substantial risk of suicide will not be effective"

41. As Julian Knowles J also said in *Cash* at para 15:

> "In *Magiera*, [*Magiera v District Court Of Krakow, Poland* [2017] EWHC 2757 (Admin)], I observed at paras 32 - 36 that although there is a presumption that an EU Member State can provide adequate health care, there may be cases where the nature of the defendant's medical condition means that something more than that general presumption is required and there will need to be specific evidence addressing the defendant's health condition and what the foreign authorities will do to manage it."

42. For completeness I note that the instant case does not appear to me to require evidence beyond the general presumption. The presumption of EU member state compliance with Convention and other material international law treaty obligations is a strong one.

Conclusion: fresh evidence

43. First, I do not admit the evidence of Dr Hoggard as fresh evidence. For the reasons provided, there is no explanation for why it was not obtained for the extradition hearing below. Second, I find clear reasons why it is of limited value. It appears that Dr Hoggard has not had access to the applicant's medical records. The consequence is that Dr Hoggard was dependent on the applicant's self-reporting. It is further of significance that such reporting occurred after the August 2023 order for his extradition to Latvia. To my mind, this materially diminishes the probative value of the report.

44. Third, even if the report of Dr Hoggard were admissible, I am not satisfied for the purposes of section 25 that it would be unjust or oppressive to extradite the applicant due to his mental condition. However, it seems to me that his diagnoses and the prognosis for his mental health impact following extradition remain relevant to the article 8 balancing exercise.

B. Issue 2: Balancing exercise

45. The starting-point is that the parties agree that all the relevant factors for and against extradition have been accurately and exhaustively identified by the respondent in its skeleton argument. It is useful, therefore, to list the 11 factors (five for; six against) as framed:

> Factors in favour of extradition:
>
> (1) There is a constant and weighty public interest in the UK honouring its treaty obligations.

(2) The public interest in ensuring that extradition arrangements are honoured is very high.

(3) Decisions of, and requests by, a Latvian judicial authority should be afforded a proper degree of mutual confidence and respect, given that Latvia is (i) an EU member state, (ii) an ECHR signatory and (iii) a state party to ECAT.

(4) The extradition offences of which the Applicant is accused are serious. The main allegation is the equivalent of Class A drug-dealing in England and Wales. Whether human trafficking affords him a full defence to serious criminality is for a Latvian court to decide, applying domestic law.

(5) The period of time which elapsed between the alleged offences and the Applicant being arrested on the arrest warrant was a short one.

Factors against extradition:

(1) The Applicant has settled in the UK since 2021 with his wife and two sons, all of whom will be adversely affected if he is extradited.
(2) He has no previous convictions in the UK.
(3) He is not to be regarded as a fugitive.
(4) He has been diagnosed with PTSD and depression.
(5) There is evidence that the requested person was a victim of forced labour in Latvia. Assuming for Article 8 purposes that this is true, that experience would inevitably have been traumatic for him.
(6) He has responsibilities caring for his two parents in the UK.

46. When an article 8 appeal challenge is made, the question is whether the judge's overall evaluation was wrong, bearing in mind that findings of fact must ordinarily be respected, and that errors and omissions do not themselves necessarily show that the decision on proportionality was incorrect: *Celinski* at para 24; *Love v Government of the United States of America* [2018] EWHC 172 (Admin) at para 26.

47. My analysis of the identified competing factors is global and holistic, by which I mean that I consider each factor in the context of all the other factors and alongside the others. One of the practical limitations of setting down a judgment sequentially is that it must be documented linearly. However, this is not how this analysis was performed.

48. To begin, I observe that there is not a CG decision. The court ruled that it was not necessary or proportionate to adjourn proceedings to await the decision at an unknown time in future entailing unquantifiable further delay. That said,

I observed in the previous judgment that while each case must necessarily be fact-specific, viewing the matter probabilistically there is a significant chance that a CG decision would follow the RG decision. On average this occurs in around 90 per cent of cases. I emphasise the words on average. It does not follow that there would inevitably be a CG decision in the applicant's case. However, in the previous judgment I explained that such decisions in any event provide only limited assistance to the court and do not mandate the court's decision (see para 27 of that judgment, and above).

49. I intend to adopt the approach, taking matters favourably to the applicant, that it may well be true that he was the victim of forced labour in Latvia. I note that the Judge referred to there being evidence that the applicant is a victim of slavery in Latvia (judgment below, para 82) and included it as one of the "factors against extradition". The respondent does not oppose the court proceeding on the basis that the applicant may well be a victim of forced labour without making a distinct finding on it (and recognising that the CG decision remains outstanding in any event). Indeed, respondent counsel submits that such an approach places the applicant in a better position than a CG decision on its own. That is correct. Thus, I can accept that if the applicant was indeed a victim of forced labour in Latvia a return to the country may risk reviving or triggering some of the attendant trauma. I would note that the applicant was given the opportunity to provide evidence that Latvia was not or not sufficiently compliant with the obligations under the ECHR in respect of protecting people in custody from being exploited or re-exploited or re-trafficked. No such evidence was placed before the court. Therefore, the strong presumption in favour of the Latvian authorities providing protection against the applicant being re-trafficked if in custody remain intact and not displaced.

50. Thus, I proceed on the basis that if the applicant were subject to an enforced return, he is likely to experience a degree of trauma. Despite the ruling that Dr Hoggard's report is not properly admissible as fresh evidence, I am prepared for the purposes of the balancing exercise to proceed on the basis of her diagnoses. I am also prepared to weigh in the balancing exercise the forced labour itself beyond the attendant trauma, on the basis just outlined, in accordance with *IM v Regional Prosecutor's Office of Ruse, Bulgaria* [2019] EWHC 602 (Admin) at para 40. However, I emphasise, and as was also stated in *IM*, that:

> "authorities in a requesting state are entitled to make their own assessment to determine whether or not a person had been trafficked" and "to determine whether the particular offences were the result of the person being trafficked or are, in fact, unconnected with the trafficking."

51. Dr Hoggard concludes that the applicant's "mental health and emotional wellbeing would be significantly negatively affected" on extradition, and "his symptoms of PTSD and depression would worsen and… his risk of self-harm and suicidal ideation would increase". While in the past the applicant has had suicidal thoughts, he reports that he does not presently have them. However,

as indicated previously an "increase" in suicidality is not the test. It is a factor, but what Dr Hoggard does not do is to quantify what the material risk is.

52. Further, and again as indicated, there is no evidence whatsoever that Latvia would be unable to provide the necessary mental health support to the applicant. That operative presumption is of central importance in this case and materially affects the article 8 balance. In similar vein, in *Olga C v Prosecutor General's Office of the Republic of Latvia* [2016] EWC 2211 (Admin) ("*Olga C*") Burnett LJ said at para 28 that:

> "Latvian authorities would be well aware of [the requested person's] medical needs, and the medical evidence before the court could accompany [him] to Latvia, there being no reason to suppose that reasonable medical provision would not be made."

53. There is no reason why precisely the same thing could not happen in the instant case.

54. As to caring responsibilities for his parents, there is no reason why the state could not provide the required support if there was an identified high degree of need. The true context is that at para 15 of his statement the applicant states that his mother is aged 59 and "has a back problem"; his father is 69 and is in "poor health" (no details given). The extent of his support of them was characterised in the applicant's skeleton argument (para 9) as "Neither can drive and, before his arrest, he did all their shopping and deliveries." The applicant added in his statement that he collects their medication and cleans their houses (they live separately). It is not explained how they coped before his arrival in the UK. However, it is clear that his absence would not present insuperable difficulties for them.

55. He has settled in the United Kingdom, but has been here only for a limited period of time. His wife and children will unquestionably be adversely affected by his extradition to Latvia, if ordered. On this, I note that there is no evidence that Dr Hoggard spoke to the other members of the applicant's family. Therefore, the question of self-reporting arises again. Dr Hoggard made her prognoses about the "catastrophic" impact on the family should the applicant be extradited by speaking only to him. This includes her conclusion that his sons are at risk of "educational, poor peer relationships and engaging in behavioural difficulties and/or antisocial behaviours."

56. The self-reporting must limit the weight that can safely be placed on her conclusions, particularly since the applicant's reporting of his mental health problems only after extradition was ordered by the Judge raises a question about the degree to which he is being strategic. The concerns about the late reporting of the mental health problems must reasonably inform how the court views what he told Dr Hoggard about other familial impacts in the absence of any independent or objective verification of what he related. That said, the Judge took into account the impact on the children at para 85 of the judgment:

> "Quite substantial weight is to be attached to the likely detrimental impact of the absence of the requested person on the development of two sons."

57. Therefore, the Judge concluded that return was not article 8 disproportionate notwithstanding such impact on the children. Further, as noted in *Debiec* at para 35, such "familial distress" within a family caused by "enforced separation" is "almost inevitable in all cases of extradition and are generally not enough in themselves to be sufficient". Nevertheless, I regard it as an important factor to be weighed in the balance, and do not dismiss this factor, especially since there are affected children.

58. Further, and beyond the question of distress, I judge that it is inevitable that enforced separation would be a significant interference with the applicant's article 8 rights and those of this wife and children.

59. In his favour also is that there is no evidence of any criminality in the UK. However, he arrived in the UK in October 2021, so has not been within the jurisdiction for a protracted period of time. He is not to be regarded as a fugitive. But on the other side of the balance there is not an extensive delay between the alleged offences and the issue of the warrant (warrant issued on 19 October 2022; alleged offences in March 2021).

60. Taking stock overall, counsel for the applicant, with admirable economy, submits that once the court conducts a fresh balancing exercise, the "only" conclusion it could reach given Dr Hoggard's "serious diagnoses" is to deem extradition a disproportionate breach of the applicant's article 8 rights due to four factors (1) the positive reasonable grounds decision; (2) his "strong bonds" with his large family and "the damage that will be caused to them" (3) his good character in the UK; and (4) his symptoms and diagnoses of PTSD and depression.

61. However, this submission omits what to me are considerations of powerful and here decisive weight. The approach to article 8 was summarised by Lady Hale in *H(H) v Deputy Prosecutor of the Italian Republic* [2013] 1 AC 338 ("*H(H)*"), at para 8:

> Proposition (3):
>
> "The question is always whether the interference with the private and family lives of the extraditee and other members of his family is outweighed by the public interest in extradition."
>
> Proposition (7):
>
> "… it is likely that the public interest in extradition will outweigh the article 8 rights of the family unless the consequences of the interference with family life will be exceptionally severe."

62. The evidence in the instant case lacks the quality of exceptional severity. Further, the applicant's analysis pays insufficient attention to the serious offences alleged in this case. The principal offence would be classification in the UK as a Class A drug trafficking matter (105 grammes) with an inevitably substantial sentence of imprisonment on conviction. It is not for this court to determine whether his claimed experiences and treatment amount to a modern slavery or human trafficking defence under Latvian law, which is classically a matter for Latvia. Indeed, article 26 of ECAT provides that each

> "Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so'.

63. The period between the alleged offences and the extradition arrest is short and the question of delay is of limited weight in this case.

64. Moreover, there is no evidence that Latvia should be afforded anything other than full respect for being an EU member state and ECHR signatory. It is party to ECAT and no evidence has been put before me to rebut any of the presumptions about regularity and responsible state behaviour that arise from such status. Thus the applicant's "belief" that "there is no way he could properly be protected in a Latvian prison" must carry little weight in light of the required presumptions against which no rebuttal evidence has been supplied. That said, I fully recognise in accordance with *Olga C* that the applicant's being a victim of forced labour (proceeding in the way previously explained) is relevant to the balancing exercise and I have taken it into account along with the likely trauma produced by enforced return.

65. Turning to the United Kingdom, the further substantial difficulty faced by the applicant is the strength of the public interest in this nation complying with its international treaty obligations. There is and remains a high degree of need for this country as a matter of comity and reciprocity to honour its obligations. As put by Baroness Hale with characteristic clarity in *H(H)*:

> Proposition (4):
>
> "There is a constant and weighty public interest in extradition: that people accused of crimes should be brought to trial; that people convicted of crimes should serve their sentences …"
>
> Proposition (5):
>
> "That public interest will always carry great weight, but the weight to be attached to it in the particular case does vary according to the nature and seriousness of the crime or crimes involved."

66. Given the seriousness of the crimes alleged in this case, I do not regard it as arguable that the Judge was wrong. It is not arguable that a different decision should have been made. Accordingly, I refuse permission to appeal. As Baroness Hale continued within Proposition (4):

> "… the United Kingdom should honour its treaty obligations to other countries; and … there should be no "safe havens" to which either can flee in the belief that they will not be sent back."

67. It seems to me clearly unarguable that the Judge was wrong in concluding that the applicant should be returned to face Latvian justice. Nonetheless, and as is evident from the foregoing analysis, I have in any event conducted a fresh balancing exercise on the material before me. Having done so, I have no doubt that there is no disproportionate interference with any relevant article 8 rights. The public interest factors significantly outweigh the article 8 interference. As Lord Brown said in *Norris v Government of the United States of America (No 2)* [2010] UKSC 9 at para 95, it would "be only in the rarest cases that article 8 will be capable of being successfully invoked." This is a long way from such a case. I find no arguable incompatibility with relevant Convention rights. The Judge should not have decided the matter differently.

68. The appeal must be dismissed.

VI. ***Disposal***

69. Shortly stated, the conclusions of the court are:

(1) Permission to appeal is refused;
(2) In any event, and even after conducting a fresh balancing exercise, the appeal would have been dismissed.