

6.12.2017

**URGENT BRIEFING NOTE:**

**RE: THE COURT OF APPEAL TO REVIEW THE ROLE OF THE HIGH COURT IN  
TRAFFICKING CHALLENGES**

***R (BG (ALBANIA)) V SSHD C4/2016/1722 – IN THE COURT OF APPEAL***

1. The Court of Appeal has granted permission to appeal against the judgment of Mr Justice Cranston in *R (BG (Albania)) v SSHD* [2016] EWHC 786 (Admin): <http://www.bailii.org/ew/cases/EWHC/Admin/2016/786.html>
2. The accepted facts are that BG was a college student living with her parents in the conservative district of Shkoder, Albania. She was befriended by a man, K who persuaded her to believe that he loved her and wanted to marry her. She fell in love with him. She agreed to leave her parents' home clandestinely and without any belongings and she travelled with him to the city of Tirana where he said his family lived. They lived there alone in his flat together. She had keys and was free to come and go. He did not ever take her to meet his family.
3. After a few months he said he had no money, he threatened her with a knife and told her she would be killed and her family harmed if she did not agree to be subjected to prostitution by him. He began to bring men to the flat where BG was subjected to enforced prostitution.

4. After a few weeks he began transporting her to street locations where he had arranged for men to collect her and take her to hotels for the purposes of her enforced prostitution.
5. Each day he would take the punters' money from her. He would bring her back to the flat where he accommodated her before taking her back out to the streets the next day.
6. After a few months BG escaped with the help of a punter and travelled alone to the UK via Italy on the Eurostar. On arrival at St Pancras she claimed asylum and gave a summarised, clear account of what had happened to her in Albania during her screening interview. The Border Official did not refer her into the NRM. She was detained.
7. The SSHD certified her asylum claim under the Dublin II Regulation. Judicial review proceedings were brought to challenge the asylum certification and the failure to refer her into the NRM. As a result, BG was released from detention and referred by the SSHD into the NRM.
8. A positive Reasonable Grounds decision was made. This was followed by a negative Conclusive Grounds decision. In that decision the SSHD accepted that BG had been subjected to enforced sexual exploitation in Tirana by K that it was achieved by K's threats to her life and harm to her family and it was for K's financial gain.
9. However, the SSHD refused to accept that BG was a victim of trafficking from Shkoder to Tirana, rejecting the possibility that K had groomed BG and had trafficked her from Shkoder to Tirana. The SSHD decided instead that BG was a victim of severe domestic abuse which arose from her boyfriend K's 'existential crisis' that was generated by him running out of money. The trafficking expert had not in her report addressed whether BG had been harboured or transported within Tirana for the purposes of sexual exploitation. The SSHD also ignored that.
10. The SSHD refused BG a positive decision under the NRM on a Conclusive Grounds basis.
11. A request for reconsideration on the basis that the SSHD had erred in her application of the trafficking definition to the accepted facts of the case was summarily refused. The submission that on the accepted facts BG had been trafficked by K within Tirana for the purposes of sexual exploitation and she had been also harboured by K in the flat for that

purpose, under threat of death, was ignored despite the SSHD expressly accepting enforced prostitution by threat for financial gain had occurred and that her own policy included a requirement for the SSHD to consider harbouring.

### **Proceedings in the Administrative Court**

12. BG's challenge was heard in a 2-day hearing before Cranston J in the Admin Court in 2015.
13. The Judge refused the application. Although he found it was open to recognise the facts as including harbouring for the purposes of sexual exploitation from October 2012 he held that the SSHD's Conclusive Decision to reject trafficking and to find instead severe domestic abuse was a reasonable finding at the time the SSHD made it.
14. The Judge found also that K's action of taking BG from his flat to pre-arranged street locations to meet men who would then take BG to hotels for the purpose of sexual exploitation was not 'transportation' under the Trafficking definition but was instead 'mere facilitation'.

### **Proceedings in the Court of Appeal**

15. Last week the Court of Appeal decided to grant permission on three core Grounds of Appeal, having directed an inter partes oral hearing (no earlier refusal of permission having taken place).
16. Permission has been granted on the following Grounds:
  - a. The Judge was wrong to hold that the SSHD had made a lawful or rational decision in finding that BG did not meet the trafficking definition under Article 4 of the Trafficking Convention, on the accepted facts.
  - b. The Judge was wrong in his approach to the role of the Court in reviewing the lawfulness of the Conclusive Decision and his failure to determine whether BG met the trafficking definition was in breach of Article 4 ECHR.
  - c. The Judge erred in holding that the SSHD had lawfully detained BG on her arrival in the UK and subsequently, due to the presence of human trafficking

indicators in her screening interview at port and the failure to refer her into the NRM.

- d. On a separate Ground of Appeal relating to Dublin II and the conditions for her return to Italy, as well as the generic nature of the assurance given by the Italian authorities under Dublin II, the Court of Appeal has stayed BG's challenge to her removal to Italy pending the application of *NA* for permission to appeal before the Supreme Court against the judgment in *NA (Sudan) & Anor v SSHD* [2016] EWCA Civ 1060.
17. The appeal under Grounds 1-3 is to be listed for a 2-day hearing before three Lord Justices next year.
18. The outcome of the appeal on Grounds 1 -3 is potentially likely to have implications for similar cases. It is hoped that this note will assist anyone who has a claim that raises similar issues and who might wish to apply for a stay pending the outcome of this appeal.
19. Please do get in touch with any of us if you have any queries

### **Representation**

20. **Parosha Chandran is Leading Junior Counsel and Claire Physsas is Junior Counsel, both of 1 Pump Court, for the Appellant, instructed by Raja Uruthiravinayagan of Duncan Lewis.**

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**End.**