

# Judicial Review and Courts Bill

## Case Studies - Clause 2

### 1. Trafficking victim: a fundamentally flawed ruling

*R (G) v Upper Tribunal [2021] EWHC 239 (Admin)*

G, was trafficked into the UK from her home country of Nigeria. Traffickers in both countries had brutally mistreated her and subjected her to serious physical and sexual abuse. Whilst in the UK she gave birth to a child, which she looked after alone.

There was no question that G was a genuine trafficking victim. The Government did not dispute this. A tribunal was convened to decide what support and protection G ought to receive, but when it came to the hearing, the tribunal went beyond the statements of the parties and decided that she was not in fact, a victim of any trafficking or exploitation. As such, G did not attract protection and could be removed from the UK. This would have resulted in her falling back into her trafficker's hands and undoubtedly led to her being seriously mistreated and perhaps killed. The fate which would have befallen her child is difficult to even contemplate.

The Cart procedure was used to re-evaluate this decision before the High Court. The Court found that the tribunal had made a litany of errors leading to "elementary and serious breaches of the principles of procedural fairness" and as such its decision could not stand. These included going beyond the Government's case and making unsupported findings against G, without giving her the chance to defend herself, and departing from Country Guidance without good reason. On the evidence, G was very clearly a victim of trafficking; the High Court ruled that she should be treated as such. In fact, it ruled that G's case was not only arguable and should have proceeded, but that it was "bound to succeed" based on the strength of her claim.

Without the oversight of the High Court, the tribunal's original "fundamentally flawed" ruling would have been put into effect, which would not only have established a position which was wrong in law, but seriously risked putting G in grave danger. The Cart jurisdiction was vital for correcting this error.

### 2. Orphan of murdered parents at risk of murder in Palestine

*MY v Secretary of State for the Home Department [2021] UKUT 232 (IAC)*

MY, the claimant in this case, lived a difficult and tragic life. When he was twelve years old, his family was tracked down, shot, and killed in front of him. He drifted between states, before moving to the UK. After some time, the UK sought to remove him to Palestine. Not only would this have put him in great danger of being targeted and killed like his family, medical experts confirmed that he was suffering from serious mental health problems and that removal would likely cause serious harm to him or others. Whilst the tribunal dismissed these claims, the High Court was able to intervene. The High Court, (then Court of Appeal) assessed his Cart application and found that the tribunal had been applying an outdated understanding of the law.

Thanks to Cart, the senior courts were able to ensure that the correct law was applied, the relevant evidence was considered properly, and the serious medical concerns about MY's physical and mental health were taken seriously. Were it not for the Cart jurisdiction, a seriously vulnerable man, may have been sent to a country where he have faced a significant risk of being killed and may have posed a serious risk to himself and others.