Neutral Citation [2013] IEHC 229

THE HIGH COURT

Record No. 2011 / 311 EXT

IN THE MATTER OF THE EXTRADITION ACTS 1965 to 2001

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

AND

RENALDAS POCEVICIUS

RESPONDENT

JUDGMENT of Mr. Justice Edwards delivered on the 9th day of April 2013.

Introduction
In these proceedings the Kingdom of Norway (hereinafter Norway) seeks the extradition of the respondent with a view to prosecuting him in Norway for the offence of importing approximately 5 kilograms of methamphetamine to Norway from Lithuania on the 25th September, 2008, contrary to section 162(1) cf. subsection 3, first sentence of the Norwegian General Civil Penal Code, an Act of the 22nd May, 1902, No.10 with subsequent amendments, the latest made by Act of the 21st December, 2005m No.131 (hereafter "the Norwegian General Civil Penal Code").

It is alleged that the respondent was due to receive this methamphetamine at Stavanger from a man called Michail Oleinik. He was the person who had physically brought the drugs into Norway via the Swedish frontier with Norway just before 4pm on the 24th September, 2008. Mr. Oleinik was arrested in Stavanger on the 25th September, 2008.

Legislation and international agreements
The application of Part II of the Extradition Act 1965 (hereinafter the Act of 1965) is governed by s.8 thereof.

S.8 (1) (as substituted by s. 57 of the Criminal Justice (Terrorist Offences) Act, 2005) provides:

> "Where by any international agreement or convention to which the State is a party an arrangement (in this Act referred to as an extradition agreement) is made with another country for the surrender by each country to the other of persons wanted for prosecution or punishment or where the Minister is satisfied that reciprocal facilities to that effect will be afforded by another country, the Minister for Foreign Affairs may, after consultation with the Minister, by order apply this Part—
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> (a) in relation to that country, or
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> (b) in relation to a place or territory for whose external relations that country is (in whole or in part) responsible."

Norway is a party to the European Convention on Extradition 1957 and the Minister for Foreign Affairs has applied Part II of the Act of 1965 to Norway by means of the Extradition Act 1965 (Application of Part II) Order, 2000 (S.I. No. 474 of 2000).

> S.23 of the Act of 1965 provides that:
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> "…a request for the extradition of any person shall be made in writing and shall be communicated by (a) a diplomatic agent of the requesting country, accredited to the State, or (b) any other means provided in the relevant extradition provisions."
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> Article 12 of the European Convention on Extradition 1957 provides:
>
> "1. The request shall be in writing and shall be communicated through the diplomatic channel. Other means of communication may be arranged by direct agreement between two or more Parties.
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> 2. The request shall be supported by:
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> a. the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting Party;
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> b. a statement of the offences for which extradition is requested. The time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible; and
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> c. a copy of the relevant enactments or, where this is not possible, a statement of the relevant law and as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality."

Under s. 26(1) of the Act of 1965 (as amended by s. 7 of the Extradition (Amendment) Act 1994, and by s.20 of the Extradition (European Union Conventions) Act 2001):

"(a) If the Minister receives a request made in accordance with this Part for the extradition of any person, he shall, subject to the provisions of this section, certify that the request has been made.

(b) On production to a judge of the High Court of a certificate of the Minister under paragraph (a) stating that a request referred to in that paragraph has been made, the judge shall issue a warrant for the arrest of the person concerned unless a warrant for his arrest has been issued under section 27."

In this context s. 3 of the Act of 1965 provides that "Minister" means the Minister for Justice.

The circumstances in which an order under Part II of the Act of 1965 can be made are set out in s. 29(1) of that Act, as amended by s. 20 of the Extradition (European Union Conventions) Act 2001, which (to the extent relevant) is in the following terms:

"29—(1) Where a person is before the High Court under section 26 …. and the Court is satisfied that—

(a) the extradition of that person has been duly requested, and

(b) this Part applies in relation to the requesting country, and

(c) extradition of the person claimed is not prohibited by this Part or by the relevant extradition provisions, and

(d) the documents required to support a request for extradition under section 25 have been produced,

the Court shall make an order committing that person to a prison ….. there to await the order of the Minister for his extradition."

As regards the documents required to support a request for extradition, s. 25 of the Act of 1965 as amended provides:

"25—(1) A request for extradition shall be supported by the following documents—

(a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or, as the case may be, of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting country;

(b) a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting country;

(c) a copy or reproduction of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law;

(d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality, including, where available, any fingerprint, palmprint or photograph, and

(e) any other document required under the relevant extradition provisions.

(2) For the purposes of a request for extradition from a Convention country, a document shall be deemed to be an authenticated copy if it has been certified as a true copy by the judicial authority that issued the original or by an officer of the Central Authority of the Convention country concerned duly authorised to so do."

The request for extradition in this case – legal formalities

The Court is satisfied on the evidence before it that the respondent's extradition has been duly requested, by means of a Rogatory Commission addressed to the Competent Legal Authorities in Ireland, dated the 12th October, 2010, (hereinafter called "the Rogatory Commission") and communicated to the Irish Department of Foreign Affairs by the Royal Norwegian Embassy in Dublin on the 13th July, 2011, later supplemented by a document entitled "Supplement to the Rogatory Commission addressed to the Competent Legal Authorities in Ireland", dated the 7th June, 2012, (hereinafter called "the supplement of the 7th June, 2012") and communicated to the Irish Department of Foreign Affairs by the Royal Norwegian Embassy in Dublin on the 11th July, 2012. The supplement of the 7th June, 2012, constitutes an addendum to the initial request for the respondent's extradition. The court is satisfied that the Rogatory Commission and the supplement of the 7th June, 2012, are to be considered together as a single request, and that that request has been made properly and in accordance both with s. 23 of the Act of 1965 and with Article 12 of the European Convention on Extradition 1957.

The Court is further satisfied that Part II of the Act of 1965 applies to the requesting country.

The Court has had produced to it a certificate of the Minister for Justice and Equality, dated the 3rd September, 2011, and made under s. 26(1)(a) of the Act of 1965 as amended, which certificate is in the following terms:

"WHEREAS by the European Convention done at Paris on 13 December 1957, to which the State is a party, an arrangement was made with the other countries who are parties to the Convention for the surrender of persons wanted for prosecution or punishment for an offence specified in Article 2 thereof,

AND WHEREAS the said Convention was ratified on behalf of Ireland on 12 July 1988,

AND WHEREAS the Convention has also been ratified or acceded to on behalf of Norway,

AND WHEREAS on 19 December 2000 the Government made an Order being the Extradition Act 1965 (Application of Part II) Order 2000 applying Part II of the Extradition Act 1965, in relation to a number of countries including Norway,

AND WHEREAS I have on 15 July 2011 received a request duly made by Norway in accordance with Part II of the Extradition Act 1965 and the said Convention for the extradition of Renaldas Pocevicius which has been duly

communicated by its Embassy,

NOW I, Alan Shatter, Minister for Justice and Equality hereby certify that the aforesaid request has been duly made by and on behalf of and received by me in accordance with Part II of the Extradition Act 1965."

On the 14th September, 2011, the High Court issued a warrant for the arrest of the respondent and the respondent was duly arrested on the 17th September, 2011. He was granted bail and has been remanded in that status from time to time pending the conclusion of these proceedings.

I am satisfied that in the present case that the Court has had produced to it in respect of each offence for which the respondent's extradition to Norway is sought the original or an authenticated copy of the relevant warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the Kingdom of Norway. The documents in question consist of an initial domestic arrest warrant issued by Stavanger District Court on the 25th November, 2008, and which remained in force until the 30th January, 2009; a subsequent arrest order of Stavanger District Court dated the 12th January, 2010, ordering that he "may continue to be wanted by the police with a view to his arrest and extradition, and prosecution in Norway" until the 1st September, 2010 ; a subsequent arrest order of Stavanger District Court dated the 1st September, 2010, extending the previous order until the 1st March, 2011; a subsequent arrest order of Stavanger District Court dated the 1st March, 2011, extending the previous order until the 1st March, 2012; a further order of Stavanger District Court dated the 22nd February, 2012, extending the previous order until the 1st March, 2013, and a further order of Stavanger District Court dated the 19th February, 2013, extending the previous order until the 1st July, 2013.

Authentication is provided in the following circumstances. The Court has a certificate dated the 8th July, 2011, from the Norwegian Minister for Justice, a Mr. Knut Storberget, who has certified that the documents accompanying the (initial) request were prepared in support of the request, are issued by the appropriate authority according to Norwegian law, and have been signed by an officer of the Norwegian Ministry of Justice and Police. The Court understands that in Norway the Minister for Justice is the Central Authority for the purposes of Council Act of the 27th September, 1996, adopted on the basis of Article K.3 of the Treaty on European Union, drawing up the Convention relating to extradition between the Member States of the European Union. In addition, the documents accompanying the initial request are all notarised by a Notary Public. The Court further has a certificate dated the 5th July, 2012, from a Deputy Director General at the Norwegian Ministry of Justice, a Ms. Torunn Marie Bolstad, who has certified that the addendum to the request for the extradition of the respondent, i.e. the supplement of the 7th June, 2012, and the documents accompanying it, should be considered as part of the documentation supporting the request, and that these documents "are issued by the competent Norwegian authorities, and duly certified by an Officer of State." Counsel for the respondent has confirmed that no issue is being taken as to the sufficiency of the authentication provided, and I am satisfied in any event that it is sufficient.

I am further satisfied that the Court has had produced to it a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the Kingdom of Norway. I consider that the charge sheet dated the 18th November, 2008, accompanying the request for extradition is sufficient for that purpose. (The English translation incorrectly dates it as the 11th November, 2008, but no point is taken on this).

I am further satisfied that in the present case the Court has had produced to it a copy or reproduction of the relevant enactments of the Kingdom of Norway, and in particular relevant extracts from sections 67 and 162, respectively, of the Norwegian General Civil Penal Code, and sections 171 to 175, inclusive, of the Norwegian Criminal Procedure Act of the 22nd May, 1981, No.25 with subsequent amendments, the latest made by Act of 30th June 2006 No. 53 (hereafter "the Norwegian Criminal Procedure Act").

The request for extradition in this case was accompanied by a description of the person concerned with two photographs annexed, one taken from the side and one taken from the front. In the circumstances I am satisfied that the requirements of s. 25(1)(d) were fulfilled.

Finally, I am satisfied that there are no other documents required under the relevant extradition provisions, and s. 25(1)(e) has no application in the circumstances of this case.

The substance of the request:
The Rogatory Commission is in the following terms:

"With reference to Article 12 and Art. Nos. 1 and 2 of the European Convention of 13 December 1957 on the extradition of criminals, the Norwegian authorities request the assistance of the Irish authorities for the extradition of the Lithuanian national

Renaldas Pocevicius, date of birth 7 February 1973

Address: 12, The Belfry, Clonakilty Co. Cork, Ireland in that he is charged with offences outlined in a separate charge sheet dated 18 November 2008 (Attachment 1).

The tariff for this offence is a term of imprisonment not exceeding 21 years. The limitation period is 25 years, cf. Section 67 of the Norwegian General Civil Penal Code (Attachment 7).

The background to the case - reasonable grounds for suspicion:

On Thursday, 25 September 2008 at approximately 5 pm, the Lithuanian national Michail Oleinik, date of birth 24 July 1981, was stopped by the police in the city centre of Stavanger, Norway. Following a further examination of the vehicle he used when driving to Stavanger, 4.9kg of methamphetamine were found hidden in a "made up" room in the petrol tank of the car.

Prior to the trip to Norway, the car, an Audi 80 sedan with registration number ECT 799, had been registered in the name of Michail Oleinik in Klaipeda in Lithuania. Michail Oleinik drove to Norway from Klaipeda in Lithuania on Tuesday 23 September 2008 via Sweden. On Wednesday 24 September just before 4 pm, he drove to Norway via the Ørje customs station, which is a frontier post between Norway and Sweden. Thereafter, he drove more or less straight to Stavanger, and arrived in Stavanger the evening or night before Thursday 25 September 2008.

Along the way, after crossing the Norwegian border, Michail Oleinik received two SMS messages from Maksim Popov in

Klaipeda in Lithuania, containing a telephone number (+xx xxxxxxxx), which he was to call when he arrived in Stavanger. It did not appear from the SMS messages who was operating this telephone number, but it was clear that it was the person who was responsible for meeting Michail Oleinik and receiving the drugs. This was the only point of contact Oleinik had to go by before he came to Stavanger. During the taking of evidence in Lithuania, Maksim Popov admitted to the Norwegian prosecution authorities that he was one of the people behind the transporting of the drugs. Popov has been arrested and is being prosecuted for the offence in Lithuania.

After his arrival in Stavanger, Michail Oleinik repeatedly attempted to call the telephone number he had been given, but failed to make contact as he entered the +47 before the mobile number (the Norwegian country code for calls from abroad), and as a result of this, he unintentionally dialled a children's day nursery in Trøndelag, Norway. Michail Oleinik was apprehended by the police before he was able to establish contact with the recipient and hand over the drugs.

As far as the basis for suspicion against Renaldas Pocevicius is concerned, police investigations have found that the telephone number +xx xxxxxxxx was established by Renaldas Pocevicius at a petrol station in Klepp, Norway, on 22 August 2008. Renaldas Pocevicius used his own driver's licence (drivers licence number xxxxxxxx) as a means of identification in connection with the establishment of this [telephone] number. The arrangement and procedure appears to be typical for this type of import where a courier is used to bring the drugs into the country, who subsequently contacts a recipient who he necessarily does not know. The fact that new cash cards / mobile telephones are used also appears as typical in order to keep the activity as concealed from the police as possible. The same applies to the courier not knowing which telephone number to contact in order to reach the recipient of the drugs until after he had passed the frontier post.

In the opinion of the Norwegian prosecution authority, these matters indicate that a direct link exists between the supplier element represented by Maksim Popov, and Renaldas Pocevicius, who was supposed to receive the drugs in Stavanger.

Renaldas Pocevicius arrived in Stavanger on 21 August 2008 and returned to Ireland a few days after the arrest of Michail Oleinik. After the arrest of Michail Oleinik, it was decided to initiate telephone interception of Renaldas Pocevicius' mobile telephone number (xxxxxxxx). The telephone interception revealed that it was Renaldas Pocevicius who was using the telephone number at the time in question. There was activity on this number up until 27 August 2008, which corresponds to his leaving Norway to return to Ireland. In the opinion of the prosecution authority, the fret that the suspect Renaldas Pocevicius arrived in Norway immediately prior to the import and left the country immediately after the arrest, supports the grounds for suspicion.

Renaldas Pocevicius stayed with Dainius Perminas, Markveien 1, Klepp (approximately 20km south of Stavanger) while he was in Norway. Dainius Perminas was subsequently arrested, remanded in custody and indicted on charges of conducting another import of approximately 10kg of methamphetamine from Lithuania to Norway.

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By an order issued on 25 November 2008, Stavanger District Court found that the conditions for arresting the suspect were present, cf. Attachment 2. Stavanger District Court subsequently extended the arrest warrant by an order issued on 12 January 2010 (see Attachment 3) and by order issued on 1 September 2010 (Attachment 9).

An international wanted notice/Schengen territory wanted notice was issued on 28 November 2008 for the suspect Renaldas Pocevicius.

It should also be noted that the suspect Renaldas Pocevicius was deported from Norway in 2002 due to criminal offences.

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As a consequence of the discovery made in his car, Michail Oleinik was arrested and remanded in custody. On September 2009, Stavanger District Court sentenced Oleinik for offences contrary to Section 162(1) cf. subsection 3, first sentence of the Norwegian General Civil Penal Code to a term of imprisonment of 4 years and 6 months. Michail Oleinik appealed the sentence to the Gulating Court of Appeal, which on 10 February 2010 sentenced him to a term of imprisonment of 3 years for offences contrary to Section 162(1) cf. subsection 2, first sentence of the Norwegian General Civil Penal Code. The judgment is now final and legally enforceable and Oleinik is currently serving his sentence in a Norwegian prison.

In 2009, the Norwegian police have taken evidence from several persons in Lithuania, including Lithuanian national Maksim Popov, who stated that he was one of the people behind the transporting of the drugs.

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In respect of the question about the personal details of the suspect, reference is made to Attachment 4. In some of the Attachments and previous correspondence, the suspect's name has occasionally been misspelled.

A separate report has been prepared of the SMS contact between Michail Oleinik and Maksim Popov (see Attachment 5).

Kripos, which is the Norwegian body that undertakes analyses of all drugs, has explained the difference between the narcotic substances methamphetamine and amphetamine (see Attachment 6).

It can also be confirmed that, at the time of the import, the offence was and continues to be a criminal offence under Section 162 of the Norwegian General Civil Penal Code."

The narrative above apparently misstated a date and this was corrected by means of additional information from the Rogaland Public Prosecution Service dated the 8th May, 2012, which asserted:

"In the Rogatory Commission of 7 July 2010, the date of the termination of the interception of communications of subscription no. +xx xx xx xx xx, Renaldas Pocevicius, was stated as 27 August 2008.

The correct date is 27 September 2008."

The following attachments, all of which have been scrutinised and considered by this Court, accompanied the request:

"Attachments:

….

2. Charge sheet 18 November 2008

3. Arrest Warrant issued by Stavanger District Court 25 November 2008

4. Arrest Warrant issued by Stavanger District Court 12 January 2008

5. Overview of Renaldas Pocevicious' personal details

6. Report concerning the SMS contact between Michail Oleinik and Maksim Popov

7. Report from Kripos (National Bureau of Crime Investigation) on methamphetamine

8. Extract from Sections 162 and 67 of the Norwegian General Civil Penal Code

9. Extract from Sections 171 - 175 of the Norwegian Criminal Procedure Act

10. Stavanger District Court's arrest warrant 1 September 2010

…."

Points of Objection
The respondent objects to his proposed extradition on the following basis:

"1. The warrant for the arrest of the respondent was not issued for the purpose of his prosecution. Rather it would appear to have been issued for the purpose of bringing him before the relevant police authority. In the circumstances the warrant has been issued for the purposes of investigation rather than prosecution. As such his surrender would not be for the purpose of proceedings for an offence within the meaning of Section 9 of the Extradition Act, 1965 as amended.

2. The fact that the warrant was issued for the purpose of investigation is underlined by the failure of the requesting state to furnish the information required by Article 12(2)(b) of the European Convention on Extradition, 1957 and Section 25(b) of the Extradition Act, 1965. In particular the warrant fails to recite where the alleged offence took place. In the circumstances, and having regard to cogent evidence to the effect that the respondent was in Ireland at the time of the alleged offence it is pleaded that the absence of such information in the warrant renders same defective and as such surrender ought be refused. In the alternative it is pleaded that the surrender of the respondent is precluded by reason of Section 15 of the said Act.

3. The warrant on foot of which surrender is sought is not immediately enforceable and as such surrender ought be refused.

4. Having regard to the primary purpose of the warrant issued by the requesting state, namely for the purpose of seeking the return of the respondent for the purpose of questioning, the respondent hereby notifies his willingness to be interviewed by the Norwegian Police and to co-operate in the exercise of any mutual legal assistance procedures considered appropriate by the requesting state. In the premises the surrender of the respondent for a like purpose would be entirely disproportionate and would amount to a breach of his rights pursuant to the Constitution.

5. The requesting state has delayed unduly in seeking the surrender of the respondent or of notifying the respondent of the existence of allegations of serious criminal offences against him. The respondent was not present in the requesting state and would, in the normal course of events, have been in a position to adduce cogent alibi evidence in relation to the alleged offence the subject of these proceedings. The delay on the part of the requesting state in seeking the surrender of the respondent has irremediably prejudiced the respondent in seeking out and preserving such evidence. As such it would amount to a breach of the respondent's constitutional right to a fair trial were he to be surrendered."

The Order of Stavanger District Court for the respondent's arrest
As there is an issue in the case concerning the purpose for which the respondent's extradition is being sought, it may be helpful to recite the terms of the order of Stavanger District Court dated the 12th January, 2010, which, as stated earlier, has been renewed and continued from time to time. The order of the 12th January, 2010, was in the following terms:

"COURT ORDER

The Rogaland Chief of Police, represented by Police Inspector Pål Jaeger-Pedersen, has by transfer letter dated 10 January 2010 transferred the case to Stavanger District Court, requesting that the warrant for the arrest of Lithuanian national Renaldas Pocevicius, date of birth 7 February 1973, be maintained pursuant to Section 175(2) Nos. 1 and 2 of the Norwegian Criminal Procedure Act, in that, on 18 November 2008, he was charged with offences contrary to Section 162(1), cf. subsection 3, first sentence of the Norwegian General Civil Penal Code, in that, on Thursday 25 September 2008, he imported approximately 5kg of methamphetamine to Norway from Lithuania.

It has been stated that the suspect is of no fixed abode and that he is most probably residing abroad. The prosecution authority intends to issue an international wanted notice with a view to his arrest and extradition. The Rogaland Prosecution Service supports this course of action. The suspect was deported from Norway in 2002. He arrived at Stavanger Airport Sola on 21 August 2008. Further information concerning these facts is provided in the police reports, included in doc. 02.

There are reasonable grounds for suspecting the charged person of having committed offences contrary to Section 162(1), cf. subsection 3, first sentence of the General Civil Penal Code, as described in the grounds for the charge. Reference is also made to the charge against Michail Oleinik. In particular, the court refers to the information provided in Doc. Nos. 02 and 10. The confiscated material is identified as consisting of 4,99l g of a methamphetamine sulphate containing composition of substances. The methamphetamine sulphate content is determined at 40% on average. Methamphetamine is included on the list of narcotics.

There are clear reasons to fear that the suspect will seek to avoid prosecution, cf. Section 171(1) of the Norwegian Criminal Procedure Act. There is also a very real possibility that he will destroy evidence in the case, cf. Section 171(1) No. 2 of the Criminal Procedure Act. The petition is sustained. A wanted notice issued in the Schengen area and an arrest with a view to his extradition are clearly not disproportionate interventions given the serious nature of the case and the information provided about the suspect This order remains in force until 1 September 2010.

CONCLUSION

Renaldas Pocevicius, date of birth 7 February 1973, Lithuanian national, may continue to be wanted by the police with a view to his arrest and extradition, and prosecution in Norway. This order remains in force until 1 September 2010."

Various provisions of the Norwegian General Civil Penal Code, and also of the Norwegian Civil Procedure Act are referred to in the said order, and it is also appropriate to set them out for a full understanding of the import of the order of the 12th January, 2010.

There is a reference to section 162 of the Norwegian General Civil Penal Code and it provides:

"Section 162. Any person who unlawfully manufactures, imports, exports, acquires, stores, sends or conveys any substance that pursuant to statutory provision is deemed to be a drug shall be guilty of a drug felony and liable to fines or imprisonment for a term not exceeding two years.

An aggravated drug felony shall be punishable by imprisonment for a term not exceeding 10 years. In deciding whether the offence is aggravated particular importance shall be attached to what sort of substance is involved, its quantity, and the nature of the offence.

If a very considerable quantity is involved in the offence, the penalty shall be imprisonment for a term of not less than three years and not exceeding 15 years. Under especially aggravating circumstances a sentence of imprisonment for a term not exceeding 21 years may be imposed.

A drug felony committed negligently shall be punishable by fines or imprisonment for a term not exceeding two years.

Any person who aids and abets a drug felony shall be liable to the same penalty. Fines may be imposed in addition to imprisonment."

There are also references in the Court's Order to sections 171 and 175 respectively of the Norwegian Criminal Procedure Act, and these are in the following terms:

"§ 171. Any person who with just cause is suspected of one or more acts punishable pursuant to statute with imprisonment for a term exceeding 6 months, may be arrested when:

1) there is reason to fear that he will evade prosecution or the execution of a sentence or other precautions,

2) there is an immediate risk that he will interfere with any evidence in the case, e.g. by removing clues or influencing witnesses or accomplices,

3) it is deemed to be necessary in order to prevent him from again committing a criminal act punishable by imprisonment for a term exceeding 6 months,

4) he himself requests it for reasons that are found to be satisfactory.

When proceedings relating to preventive supervision have been instituted, or it is probable that such proceedings will be instituted, an arrest may be made regardless of whether a penalty may be imposed, as long as the conditions in the first paragraph are otherwise fulfilled. The same applies when a judgement in favour of preventive supervision has been pronounced or the question of extending the maximum period for preventive supervision arises."

"§ 175. A decision to arrest is made by the prosecuting authority. The decision shall be in writing and shall contain a description of the suspect, a short account of the criminal act, and the reason for the arrest. If delay entails any risk, the decision may be made orally, but shall then be written down as soon as possible.

A decision to arrest may be made by the court if the suspect is staying abroad and the prosecuting authority wishes to apply for his extradition, or if the circumstances otherwise so indicate.

The decision shall be executed by the police or by some person who has been so requested by the prosecuting authority."

Correspondence and minimum gravity
The relevant statutory provisions as those contained within s. 10 of the Act of 1965 as amended by s. 11 of the Extradition (European Union Conventions) Act 2001. Counsel for the applicant has invited the Court to find correspondence with the offence in Irish law of possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act 1977 on the basis that it is clearly alleged that the respondent had control over the drug in question at the material time. It was also suggested that, having regard to the quantity involved, the Court could also readily find correspondence with an offence of possession of a controlled drug for sale or supply contrary to s. 15 of the Misuse of Drugs Act 1977. The suggested correspondences were not challenged by counsel for the respondent who confirmed that he was "raising no issue on correspondence". The Court, having considered the totality of the information placed before it by the applicant, and the provisions of s. 10(3) of the Act of 1965 as amended, is satisfied to find correspondence with the offence in Irish law of possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act 1977, and also with the offence of possession of a controlled drug for sale or supply contrary to s. 15 of the Misuse of Drugs Act 1977 (though this second finding is superfluous in circumstances where correspondence with any one offence will suffice).

In so far as minimum gravity is concerned, there was again no controversy. The offences charged under Norwegian law carry a potential penalty of imprisonment for up to twenty one years, and the corresponding offences under Irish law, namely, possession of a controlled drug contrary to s. 3 of the Misuse of Drugs Act 1977, or possession of a controlled drug for sale or supply contrary to s. 15 of the Misuse of Drugs Act 1977, carry potential penalties of up to seven years imprisonment, and fifteen years imprisonment, respectively. In those circumstances it can be stated that the minimum gravity requirements of s. 10 of the Act of 1965 are comfortably met.

Principal evidence adduced on behalf of the respondent
The respondent sought to rely in the first instance upon an affidavit sworn by his solicitor, a Ms. Patricia Byrne, on the 3rd May, 2012, and the documents therein exhibited. One of those documents was a letter from a Norwegian lawyer expressing an opinion as to how Norwegian law would apply to the respondent in the circumstances of the case. The applicant objected to the respondent adducing evidence in that way, and insisted that the respondent himself ought to have deposed to the matters contained in Ms. Byrne's affidavit, and that in so far as the letter from the Norwegian lawyer was concerned it was a mere exhibit and there was no evidence as to the truth of its contents. It was suggested that if the respondent wanted to put evidence as to how Norwegian law would apply in the circumstances of the applicant's case it was incumbent upon him to put an affidavit from a Norwegian lawyer before the Court.

In the Court's view the objections raised were valid ones. First of all, under the procedure initially adopted the respondent had in effect insulated himself against possible cross-examination as to key matters of fact. Secondly, the solicitor's affidavit was, as a result of being based in large measure on instructions that she had received from her client as to matters of fact, predominantly hearsay. In circumstances where Ms. Byrne's affidavit was predominantly hearsay it contravened the rules relating to affidavits as contained in the Rules of the Superior Courts 1985-2013 and the applicant was entitled to object to its admissibility on that account. Moreover, even if Ms. Byrne's affidavit had not been objected to, the Court would be disinclined to attach much weight to the evidence of a deponent testifying through his solicitor as to controversial matters of fact where he was not prepared to subject himself to at least the possibility of being cross-examined. Thirdly, the applicant was correct in asserting that merely exhibiting the letter from the Norwegian lawyer serves only to prove that such a letter exists, it does not prove the truth of its contents. What was required if the respondent wished to put before the Court opinion evidence as to Norwegian law, and/or the application of that law, was sworn testimony from a properly credentialed expert in Norwegian law. The letter exhibited in the manner in which it was exhibited by Ms. Byrne was not evidence on which the Court could act.

Having indicated the legal approach the Court would adopt if required to formally rule on these issues, the respondent requested to be allowed to proceed *de bene esse* on the basis that they might not ultimately trouble the Court, and the Court acceded to this.

It indeed proved unnecessary for the Court to make a formal ruling as to the admissibility of Ms. Byrne's affidavit in the following circumstances. The case did not in fact finish on the first day of hearing and in the circumstances it was adjourned part heard to a later date to be resumed and concluded. During the adjournment, the respondent swore an affidavit himself covering the ground that was contained in his solicitor's affidavit. The respondent's own affidavit was then filed with the leave of the Court rendering it unnecessary for the Court to formally rule Ms. Byrne's affidavit inadmissible on the grounds of hearsay.

In so far as the Norwegian lawyer's letter was concerned it subsequently emerged that the respondent was unable to secure an affidavit from the said lawyer in circumstances that are described in a supplementary affidavit of Ms. Byrne and which are not relevant to the central issue.

The respondent's affidavit was sworn by him on the 11th September, 2012, and in it he deposes to the following:

> 3. I say that I am a Lithuanian national presently unemployed and residing with my partner and 3 children at Clogheen Cross, Clogheen, Clonakilty, County Cork. My children are aged 11 years, 3 years, and 1 years. The two youngest were born in Ireland. My partner and I like Ireland and made a decision to reside in Cork to raise and educate our children. Ireland is now our home and I am concerned for my family if I am extradited to Norway. I say that lama printer by trade and was employed as a printer until 2008. Due to the economic circumstances in Ireland I lost my job at Walsh Printers, Bridge House, Rossa Street, Clonakilty, County Cork. I have been unsuccessful in getting employment and this situation has been aggravated since my arrest. I find it difficult to approach employers now because of these proceedings and my frequent attendance at the High Court in Dublin.
>
> 4. I say that I was arrested on the 17 September 2011 on foot of a Warrant issued by the High Court in these proceedings dated the 14th of September, 2011. I say that this was the first notice I had of an intention to charge me with the offence the subject of the application herein. I say that I was remanded in custody with consent to bail to Cloverhill Prison and that I have taken up bail.
>
> 5. I beg to refer to the papers comprised the request for extradition for Renaldas Pocevicius when produced.
>
> 6. I say and believe that a charge sheet dated the 18th November 2008 appears to have been prepared by the Norwegian Police. The charge alleged that I unlawfully imported approximately 5 kg of Methamphetamine to Norway from Lithuania on Thursday the 25 September 2008. I say that it appears that it is alleged that the I (sic.) participated in the said offence by way of joint enterprise with another person who appears to have been arrested in Norway in possession of the said drugs on that date having entered Norway on the 24th of September, 2008; and that I entered Stavanger in Norway on the 21st of August, 2008 and left Norway "a few days after" the date of that arrest.

7. I say that I deny the alleged offence. I say and believe that it appears that a warrant was issued in Norway for my arrest and that this warrant was renewed or re-issued on a number of occasions. I say and believe that it appears that a previous request for my extradition was not pursued since the authorities of this State indicated that certain steps should be taken by the Norwegian authorities before an extradition request could be pursued properly.

8. I say that that I was in Norway in September 2008 but left Norway on the 21st of September, 2008 on a flight from Stavanger to Copenhagen from where I flew to Dublin on the same date. In this regard I beg to refer to my Visa credit card statement which indicates that the I paid for a flight on the 20th of September, 2008 upon which marked with the letter "A" I have signed my name prior to the swearing hereof.

9. In this regard further I beg to refer to a copy of a letter which has been furnished to me and which appears to be signed by Ms Cathy Robert, Customer Service Executive of SAS Scandinavian Airlines which appears to indicate that the I (sic.) booked and flew on the said flights, upon which marked with the letter "B" I have signed my name prior to the swearing hereof.

10. I say that I paid for a train ticket in Ireland, for myself on the 21st of September, 2008 by using my Visa card to pay Iarnrod Eireann and in this regard I beg to refer to exhibit "A" referred to above.

11. I say that the I signed at the Social Welfare office in Clonakilty on the 24th September 2008. In this regard I beg to refer to a copy of a handwritten document from the Social Welfare Branch Office dated the 22nd September 2011 and upon which and marked with the letter "C" I have signed my name prior to swearing hereof.

12.1 say that I have been advised to, and I have been instructed to a) seek further evidence to establish that I was not in Norway at the time when it is alleged that I participated in the said offence; and b) seek to ascertain whether further, and perhaps definitive evidence to support my assertions is not now available but would have been available to me had I been charged earlier. In this regard I am particularly concerned as to the real possibility that CCTV or security images from various airports might have been of crucial assistance to me.

13. I say and believe that it appears likely that having regard to the passage of time between the date of the alleged offence and this application for my extradition, potentially exculpatory evidence has been lost or destroyed following a delay in initiating these proceedings; and that arising from this there is a real risk that I cannot receive a fair trial in Norway on the said charge.

14. In this regard, I say that I have been advised by counsel that the opinion of a Norwegian lawyer is necessary as to the question of whether the Norwegian legal system permits what is regarded in this jurisdiction as a sufficient remedy to protect minimum constitutionally protected fair trial rights.

15. I say that my Solicitor has been in contact with Ms. Maren Ostend a Norwegian lawyer who has given her opinion on this matter. I beg to refer to a copy of the opinion dated the 27th March 2012 and upon which and marked with the letter "D" I have signed my name prior to swearing hereof.

16. I say that it appears from the said opinion that there is no comparable remedy under Norwegian law where missing evidence arising from delay might result in a not guilty verdict by direction or prohibition.

17. I say that correspondence from Scandinavian airlines indicates that I flew on the 21st September 2008 from Stavanger to Copenhagen and Copenhagen to Dublin. My ticket number is 117-2336348838 and flight numbers are SK1871 and SK0537.

18. I say that my Solicitor sent an email on the 20th of April 2012 to the Manager of Access Control and Security Systems at Dublin Airport wherein she sought delivery of copies of CCTV footage for the period 21st September 2008 and 22nd September 2008. I say that via an email in reply Mr Vincent McGrath for Dublin Airport advised that no such footage was now in existence. I beg to refer to a copy of the emailed correspondence to Dublin Airport and from Dublin Airport dated 20th April 2012 and marked with the letter "E" I have signed my name prior to the swearing hereof.

19. I say that my Solicitor sent emails on the 20th of April 2012 to Copenhagen Airport and Stavanger Airport seeking delivery of copies of CCTV footage for the period 21st September 2008 and 22nd September 2008. By an email dated 23rd April 2012 the Security Manager at Stavanger Airport replied to say that the footage for the period requested was not available. I beg to refer to a copy of the emailed correspondence to Copenhagen Airport and Stavanger Airport dated 20th April 2012 together with the email in reply dated 23rd April 2012 and marked with the letter "F" I have signed my name prior to the swearing hereof.

20. I say that my Solicitor sent an email on the 27th of April 2012 to the Danish Police seeking the availability of copies of CCTV footage for the period 21st September 2008 and 22nd September 2008 for Copenhagen Airport. My Solicitor further enquired if CCTV footage for that period was no longer available, whether it had been destroyed and the length of time CCTV footage is retained. My Solicitor has not received a reply to this enquiry. I beg to refer to a copy of the emailed correspondence to the Danish Police dated 27th of April 2012 and marked with the letter "G" I have signed my name prior to the swearing hereof.

21. I say that having regard to the primary purpose of the warrant issued by the requesting state, namely for the purpose of seeking my return to Norway for the purpose of questioning, I am willing to be interviewed in Ireland by the Norwegian Police and to co-operate in the exercise of any mutual legal assistance procedures considered appropriate by the requesting state.

22. I say that I will suffer significant adverse consequences if I am surrendered to Norway. Firstly, I will face a deprivation of my right to liberty. Further, I believe I will be kept in custody during the investigation, as I do not have any address in Norway at which to stay or use for bail purposes. Secondly, my right to private and family life will be disproportionately infringed as all of my family are now based in Ireland."

The Court has carefully scrutinised and considered the documents exhibited "A" to "G", respectively, with the respondent's said affidavit. Although extradition proceedings are civil proceedings and not criminal proceedings and, being neither fully adversarial nor fully inquisitorial in character are *sui generis*, it is generally considered that the rules of evidence apply save where legislation

expressly provides otherwise. That of course begs the question as to whether the applicable rules of evidence are those appropriate to criminal proceedings or civil proceedings.

Guidance in regard to this in is to be found in *Minister for Justice, Equality and Law Reform v Sliczynski* [2008] IESC 73 (Unreported Supreme Court, the 19th December, 2008). In that regard, the following passages are contained witin the judgment of Murray C.J. (as he then was):

> "Counsel for the appellant properly acknowledged that extradition proceedings are neither strictly criminal nor civil in nature but the ordinary rules of evidence apply. It was submitted, citing *Minister for Justice, Equality & Law Reform –v- Abimbola* [2006] IEHC 325 which in turn relied on *R (Levin) -v- Governor of Brixton Prison* [1997] AC 741 that while not strictly criminal proceedings, in extradition matters criminal procedure and rules of evidence should apply. Suffice it to say that the latter case, the United Kingdom case, referred to a particular form of extradition proceedings in the context of arrangements for extradition between the United Kingdom and the United States which involved a wholly different procedure for extradition than that which arises under the system of surrender provided for in the Act of 2003 as amended. Section 10 of the Act of 2003 provides "Where a Judicial Authority in an issuing State duly issues a European Arrest Warrant in respect of a person …that person shall, subject to and in accordance with the provisions of this Act and the Framework Decision be arrested and surrendered to the issuing State." For the purpose of making an Order pursuant to s. 10 the trial Judge has to be satisfied that the requirements of the Act, and where specified, the Framework Decision, have been complied with. Once so satisfied he or she is bound to make the Order for surrender.
>
> As I pointed out in *Attorney General –v- Park* (Unreported) Supreme Court 6th December 2004 which concerned extradition under the Act of 1965, as amended, "The burden of proof of facts which may rest on the applicant in these proceedings is not that of a criminal trial. I hasten to add that the learned High Court Judge did not approach this matter on such a basis and it is just that I consider it appropriate at this point to distinguish between extradition proceedings and other forms of proceedings, criminal and civil. An extradition proceeding pursuant to the relevant Acts has its own special features which in a certain sense makes it sui generis." Later in the judgment it was stated "The role of the requested State, indeed its duty, is to give effect to a lawful request from a requesting State once it is determined that the request fulfils the criteria laid down by the relevant legislation …. The responsibility for bringing a person named in a warrant before the High Court clearly rests with authorities in the State. Once that is done the task in determining whether all legal requirements for the making of an Order pursuant to s. 47 are fulfilled rests with the High Court Judge. That is an inherently inquisitorial function." It seems to me that the same considerations apply to applications for surrender pursuant to the Act of 2003 and indeed s. 20 of the Act, as cited above, highlights the inquisitorial dimension of the proceedings. The rules of evidence which apply are not those of a criminal trial. In carrying out its function as aforesaid the Court ensures that no one in this jurisdiction shall be surrendered pursuant to the Act unless the Court is satisfied that all criteria laid down by the Act and, where specified, in the Framework Decision, have been satisfied and that there is no other lawful bar to the making of the Order."

This Court's understanding of the law, on the basis of this quotation, is that the rules of evidence do apply, but they are not those of a criminal trial. In many instances the same rules of evidence are applicable in both criminal and civil proceedings. However, if with respect to any particular rule of evidence that is not the case, then it is the rule as applicable to civil proceedings that must be applied. Any rule of evidence that is intended to apply solely in criminal proceedings, or that operates more restrictively in criminal proceedings, is not to be applied in an extradition case.

All of that being said, it seems to me that for the purposes of the present case the rule against hearsay applies in the same way in both civil and criminal proceedings. It might be more strictly relied applied in criminal proceedings but that is not the same thing as saying that it operates differently. It doesn't. Furthermore, the rules relating to whether a document may be relied upon as real evidence, or as original evidence, or as testimonial evidence are also the same in both types of proceedings.

The strict legal position in terms of proper application of the rules of evidence to exhibit D, i.e., the letter (described in the affidavit as "the opinion") of the Norwegian lawyer, Ms. Maren Ostend, remains as I have indicated above. It is admissible as a piece of real or original evidence. However, it's contents are not testimonial. By exhibiting it in the manner in which it has been exhibited, no more is established than the fact that there is in existence a document that purports to contain the opinion(s) of a Ms. Maren Ostend who claims to be a lawyer expert in Norwegian law. It establishes nothing with respect to the truth or otherwise of the document's contents. The applicant is not objecting to its admissibility as such, because being an exhibit it is admissible (for what it is worth) as real or original evidence. It does not fall foul of the hearsay rule in that context, rather it speaks for itself in terms of proving its existence and obvious physical characteristics. However, in circumstances where the applicant correctly identifies that the exhibit in question is not legally testimonial, and strenuously objects to the Court having any regard to its contents, the Court must apply the rules of evidence and decline to treat the contents of the said exhibit as having testimonial value.

As it subsequently transpired, the ruling out of the content of Ms. Ostend's opinion on the grounds just indicated is rendered somewhat academic in the following circumstances. The applicant at a relatively late stage of the case, and in response to a request from the Court, adduced additional information before the Court concerning Norwegian criminal law and procedure. Counsel for the respondent subsequently stated that this was consistent with the evidence that he had wished to adduce from his expert.

Additional evidence adduced on behalf of the applicant.
The applicant has put forward as additional information an unsworn document dated the 19th April, 2012, in which the Rogaland Public Prosecution Service purports to comment upon what is stated in the affidavit of Ms. Byrne previously mentioned in this judgment. As the respondent subsequently repeated the contents of Ms. Byrne's said affidavit in his own affidavit the commentary offered can be regarded as applying equally to that. The Court would not have been prepared to receive this additional information in unsworn form but for the fact that counsel for the respondent indicated that, not only was he not objecting to its introduction, he was most desirous that the Court would receive it and take account of it. The additional information states:

> "We have not had any previous information that Pocevicius is said to have left Norway on 21 September 2008 and that he stayed in Ireland for a few days. Basically, we assume that Pocevicius left Norway for Ireland as stated.
>
> This provides two alternative chains of events. One is that Pocevicius left Norway on 21 September 2008 and never returned, and the other is that he may have returned to Norway after a few days.
>
> Michael Oleinik and Maksim Popov have never given the names of those who were to receive the drugs or who were to meet Oleinik on behalf of the recipients to take over the car with the drugs. Pocevicius may have accomplices to handle the actual receipt of the drugs. These may have been given the mobile telephone subscription that both Oleinik and

Popov have stated that Oleinik was going to use to contact the recipient / the recipient's accomplices with. But even if he was in Ireland (or at other places), Pocevicius would have been able to receive calls (spoken or text messages) via this subscription with which he would have been able to communicate with his accomplices.

Due to the information provided by Advocate Byrne's affidavit, we have reviewed the other information in the case. According to the traffic data of number +xx xx xx xx xx (which was established by and registered to Pocevicius) there is a gap between 21 September 2008 at 02.00 (when Pocevicius states that he left Norway) and 25 September 2008 at 00.47 (the night before the carrier was apprehended with the drugs). Only calls on the Norwegian network have been registered. This information is consistent with Pocevicius having left Norway, which he also claims to have done, but that he returned to Norway a few days afterwards and was in Norway on 25 September 2008 when Oleinik was apprehended and the drugs seized.

Investigations have been made with airlines etc. as to whether it is now possible to find Pocevicius on passenger lists that prove / disprove that he has returned to Norway. It is difficult at this time to obtain definite information about this. We are not certain as to how he has travelled back to Norway (by air, boat, train, car or by combinations of these). There are grounds for believing that parts of the journey (perhaps the entire journey, but also including ferries) took place by car. This is because the police (after Oleinik was apprehended and the police found out about this subscription) tapped this mobile phone subscription +xx xx xx xx xx and it appears *inter alia* that on 27 September 2008 at 20.23, a person who we assume to be Pocevicius spoke with an unidentified woman and says, among other things: "All right, I got lost. I had to drive more than 1000 kilometres." Later during the same call he says: "All right, but you know that when I drove to England I was caught in a check at once. The car was dismantled." Later in the same conversation he states that the police found nothing and that he arrived two hours late due to this check. He goes on to say that "it is raining here in Norway".

This telephone call indicates that, before 27 September 2008, Pocevicius has had an extensive car journey of more than 1000 kilometres, a journey that included England. It is likely that he has driven from Ireland to Norway. The information about weather conditions ("here in Norway") confirms that, at the time of making the call, he was in Norway, which is also confirmed by the base station for this call.

On the basis of the above, there are grounds for assuming that Pocevicius has returned to Norway and was on the Norwegian cell phone network on 25 September at 00.47 am and that he certainly was in Norway on 28 September 2008 at 15.15 (last telephone call on no. +xx xx xx xx.xx, through a base station in Norway).

Advocate Byrne referred to printouts from a Visa credit card account belonging to Pocevicius, which indicates movements in Ireland on 21 September 2008. The enclosed printout extends to 23 September 2008 and is marked as page 1 of 2. 1 assume that there is no use of this credit card during the period between 24 and 28 September 2008, which is a more interesting period, as in that event it would have been enclosed with the affidavit.

Furthermore, a copy has been presented of a handwritten document dated 22 September 2011 from The Social Welfare Branch Office, confirming that Pocevicius "signed on in this office on 24 September 2008". It is fully possible to be in contact with an office in Irland (*sic*) on 24 September 2008 and thereafter be within the Norwegian borders at 00.47 on the following day. On the other hand, in Norway we would hardly accept a handwritten letter as evidence in this event as it is highly unusual for public authorities to issue certificates in this manner. We cannot be certain that the letter is genuine or not forged in cases of this nature. It is a simple matter to change or remove a digit in a date or make similar undesired changes to the document.

I see from the mail dated 22 March 2012 that our Irish cooperating partners have made an attempt to further clarify this matter, but the reply from the Social Welfare Department hardly confirms that Pocevicius has met up at this office on 24 September 2008. On the other hand, the above office confirms that Pocevicius "signed on... in person" on the 27 August 2008. We find this interesting. Pocevicius arrived in Norway on 20 August 2008 and was checked by the customs service on arrival. On 22 August 2008, he bought the mobile telephone subscription +xx xx xx xx xx at Klepp (presenting his driver's licence as documentary proof of identity). On 23 August 2008, this subscription is used several times. The next call is on 27 September 2008 at 20.22. According to Dairius Perminas, Pocevicius lived with him during this period. Nonetheless, Perminas and his wife stayed in Oslo during the period 25 to 29 August 2008 due to hospital treatment of a seriously sick child and are therefore unable personally to confirm where Perminas (sic.) was during these days. But if Pocevicius had "signed on" with the Social Welfare Department on 27 August 2008 and thereafter been in Norway on the same day at 20.22, he may without problems have done the same on 24 September 2008 and been in Norway on the following day at 00.47.

It is also noted that, despite Pocevicius having been in Norway from 20 August 2008 to 28 September 2008 (he claims that he returned on 21 September 2008), he has made no transactions that would have been registered in the Norwegian foreign currency register (for example used his Visa card in his name, exchanged currency). The only explanation must be that he used cash (NOK) throughout, or that he has credit cards issued in other peoples' names. It is extraordinary that despite his extended stay in Norway, he leaves no such traces. This does not weaken the suspicion against him."

The applicant also relies upon the following further details which are contained in the Supplement of the 7th June, 2012. That document states (*inter alia*):

"Correspondence has subsequently been exchanged in relation to the request for extradition. We have now received a mail dated 1 June 2012 in which the Irish authorities desire further clarification of a few questions. At the time of writing, the formal transfer from Ireland has not been received.

As regards the first question, the extradition is requested to enable Norwegian authorities to institute criminal proceedings against Renaldas Pocevicius and bring the case before the court. However, after his extradition Pocevicius will be able to make a statement to the police, and this statement will form a part of the total evidentiary basis when it is finally decided whether or not to file charges. Due to the degree of seriousness in this case (the quantity of the substance), the final decision relating to the question of prosecution will be made by the Director General of Public Prosecutions.

Regarding the question as to exactly where the crime took place, it is clearly stated in the charge sheet dated 18 November 2008 that it concerns import to Norway from Lithuania. Import means crossing the border during which the substance in this case was imported to Norway. Clearly, Norway has jurisdiction to prosecute the case as the crime was

committed on Norwegian territory. The same applies to Lithuania (for the export) and Sweden (for the transport across Swedish territory). The actual transport from Lithuania was carried out by a courier. Renaldas Pocevicius is charged with complicity in the import as he did not in fact personally transport the substance during the import. This is because the substance was imported according to an agreement with Pocevicius and it is him the courier was told to contact over the telephone when he had crossed the Norwegian border, to enable the recipients to take possession of the substance. Under Norwegian law, an accomplice does not need to be at the place where the actual crime is being committed. It is quite common for those who pull the strings (those behind the crime) to stay away from the substance in order to avoid detection. Therefore, whether Renaldas Pocevicius was in Norway, Ireland or at another place when the courier crossed the border into Norway, and was to contact him via telephone at a later point in time, has no bearing on his liability as an accomplice in Norway.

The substance was imported into Norway on 25 September 2008. As previously stated, it can be proven that Renaldas Pocevicius was in Norway from the end of August 2008 to 28 September 2008. It is on the basis of information given by Pocevicius to Irish authorities we have reason to believe that he travelled to Ireland during this period, but that he returned to Norway. As his mobile telephone subscription has been used in Norway on 25 September 2008 at 47 minutes past midnight, and that all calls on this subscription terminated on 28 September 2008, we assume that Renaldas Pocevicius has been in Norway (in Stavanger or the adjacent area) during the days 25 - 28 September 2008, i.e. the period immediately before the substance was imported. In this connection, we note that the courier drove the substance to Stavanger, made several attempts at contacting Pocevicius on the stated telephone number (but failed as he kept dialling the Norwegian country code before the number), he was apprehended there and the substance was seized in the courier's car in Stavanger."

At the end of the first day of hearing of this case the Court expressed the view that the document just quoted from, far from clarifying the situation as to the respondent's status in Norwegian law, created greater uncertainty. On the one hand it suggests that the respondent has not yet been charged in as much as it states "*the extradition is requested to enable Norwegian authorities to institute criminal proceedings against Renaldas Pocevicius and bring the case before the court. However, after his extradition Pocevicius will be able to make a statement to the police, and this statement will form a part of the total evidentiary basis when it is finally decided whether or not to file charges. Due to the degree of seriousness in this case (the quantity of the substance), the final decision relating to the question of prosecution will be made by the Director General of Public Prosecutions*." On the other hand it refers to the "*charge sheet dated 18 November 2008*", and expressly states that "*Renaldas Pocevicius is charged with complicity in the import (etc. etc)".* It is therefore seemingly contradictory.

While the Court was readily prepared to accept that words such as "charge" and "charged" may have different meanings under Norwegian law to the meanings they have under Irish law, and that it would be wrong to view the statements made by Norwegian authorities through a lens polarised by Irish criminal law and procedure, the Court considered that it still needed to be able to understand precisely what is meant by those terms when used in the context of Norwegian criminal law and procedure. Regrettably, up to that point, there was no clear explanation as to what was meant. The Court therefore directed the applicant to obtain and file a comprehensive affidavit of laws, or equivalent attested or notarised document, from a Norwegian lawyer concerning those aspects of Norwegian criminal law and procedure with which this Court was concerned in the present case, and adjourned the matter part heard to a subsequent date to facilitate that.

When the case was resumed, counsel for the applicant sought to put before the Court a further supplement to the original Rogatory Commission, dated the 12th September, 2012, and duly notarised by a notary public on the 26th September, 2012, consisting of a statement as to Norwegian law by a Mr. Tormod Haugnes who is a Public Prosecutor in Rogaland County, Norway.

This further supplement (hereinafter the supplement of the 12th September, 2012) was transmitted to the Irish Department of Foreign Affairs by the Royal Norwegian Embassy, Dublin under cover of a letter dated the 1st October 2012, and was accompanied by a certificate dated the 26th September, 2012, from an acting Deputy Director General at the Norwegian Ministry of Justice, a Ms. Liv Christina Houck Egseth, who has certified that the supplement of the 12th September, 2012, and the documents accompanying it, should be considered as part of the documentation supporting the request, and that these documents "are issued by the competent Norwegian authorities, and duly certified by an Officer of State." Counsel for the respondent confirmed that no issue was being taken as to the sufficiency of the authentication provided, and I am satisfied in any event that it is sufficient.

The supplement dated the 12th September, 2012, states:

"I. the undersigned Tormod Haugnes have worked as a prosecutor in criminal cases since 1986, initially as a police prosecutor and thereafter, from January 1990, as a public prosecutor in Rogaland County.

So far, the processing of the case has uncovered significant differences between the Irish and the Norwegian legal systems. These apply to the organisation of the public prosecution service, the actual criminal procedure and the rules governing the extradition of persons for prosecution in another country. My experience of sending extradition requests to several countries in Europe was not, therefore, effective as the Irish legal system and practice in this area differs somewhat from that of countries with which 1 have had similar cases previously. In this instance, this has led to misunderstandings, and to replies previously having been given not having been satisfactory in the eyes of the recipient country. With a correct knowledge of the requirements imposed by Ireland for extradition, it could with hindsight have been more appropriate to choose a different course, for example requesting at an early stage that Pocevicius be questioned by police and an indictment brought against him. In similar cases we have had with other countries in Europe, this is deferred until the charged person has been extradited.

I will start by giving a brief account of the structure of the [Norwegian] prosecution authority and who is competent to charge and/or indict persons for criminal offences. I believe this account will provide answers to the questions posed in the letter dated 8 August 2012.

The Norwegian prosecution system has three levels. At the top is the Director General of Public Prosecutions, followed by, at regional level, the regional public prosecution services (the level at which I am employed), and at the lowest level is the prosecuting authority in the police. It is particular to Norway that this lowest level prosecuting authority is also part of the police. The police prosecuting authority consists of graduate lawyers (not trained police officers). In everyday speech or writing, there is often no distinction drawn between the police prosecuting authority and ordinary police officers. For example, it is often said that the police have brought charges or an indictment against someone even though it is only the police prosecuting authority that is able to do this.

The duties of the police prosecuting authority comprise leading investigations, including giving orders to investigate, and it may charge persons with criminal offences by issuing arrest orders, orders for searches and ordering court appearances for remand hearings. It may also initiate investigations for the court (for example by requesting out-of-court judicial examinations of minors in sexual abuse cases) or by issuing charge documents against the person in question.

The police prosecuting authority may in less serious cases lay an information against an accused, issue fines in lieu of prosecution which the person in question may accept, or refer cases to the court for adjudication on the basis of a confession. They also attend court as prosecutors in respect of these cases. According to further rules, the police prosecuting authority may also discontinue prosecution in criminal cases, for example because they find the evidence insufficient to secure conviction.

The public prosecutors (the regional public prosecution services) receive the cases when they are fully investigated from the police prosecuting authority, complete with a recommendation for further action. The public prosecutors (and the Director General of Public Prosecutions) have no investigators of their own. but have the authority to order the police to undertake further investigations if considered necessary. The public prosecutors may bring indictments (with the exception of cases where the Director General of Public Prosecutions has the prosecuting competence) and themselves prosecute the most serious criminal cases before the courts, while other cases are returned to the police prosecuting authority for prosecution. If district court judgments are appealed to the Court of Appeal, the appeals are for the most part prosecuted by the public prosecutors, although a few of these cases are returned to the police prosecuting authority for prosecution. With a few exceptions that are handled by the Director General of Public Prosecutions, the public prosecutors prosecute appeal cases before the Norwegian Supreme Court.

The Director General of Public Prosecutions brings indictments in the most serious criminal cases following a recommendation by the public prosecutors. The office of the Director General of Public Prosecutions do not handle the cases themselves, apart from a few test cases before the Supreme Court.

The competence relating to which of these three levels of the prosecution service should decide the question of indictment is linked to the maximum sentence for the criminal offence that has been investigated. The higher the sentence, the higher the level where the decision as to the indictment in taken. Pocevicius is charged with the most serious degree of drugs offence, where the maximum sentence is 21 years' imprisonment. All cases with a maximum sentence of 21 years shall be decided by the Director General of Public Prosecutions. It is for this reason that it is the Director General of Public Prosecutions who will take the final decision as to whether or not to indict Pocevicius for this criminal offence.

In Norway a distinction is made between a charge and an indictment. The decision to bring an indictment is a decision to bring the case before the court. A charge is a preliminary accusation during an investigation in connection with inter alia arrests, searches or other investigative steps. A charge also gives the suspect stronger procedural rights. As it is the police who investigate all criminal cases in Norway, it is also the police prosecuting authority which formally charges all suspects, regardless of the minimum or maximum sentence for the offence that he/she is suspected of having committed. When the investigation is considered to have been completed, the police prosecuting authority makes decisions relating to the prosecution either by discontinuing the case or by bringing an indictment where the police are competent to prosecute. Where the other cases are concerned, the police prosecuting authority makes a recommendation to the public prosecutors in respect of prosecution.

If the police prosecuting authority discontinues a case, the charged person has no claim for the case to be brought before the court to obtain an acquittal. A charged person whose case is discontinued by the police prosecuting authority is regarded as having been acquitted. A discontinued case may be appealed, for instance by the aggrieved party, to a superior prosecuting authority, or it may be reviewed later if new information becomes available. I see no reason to go into the rules governing this in any greater detail.

The police may investigate the case also after an indictment has been brought. Further investigative steps may also be taken after judgment has been passed, for example prior to an appeal hearing or during the main hearing due to information that has emerged during the accused person's statement to the court. There is also nothing to prevent further investigations being conducted after the judgment is final and legally enforceable. Should the police receive information indicating that someone may have been unjustly convicted, the police shall naturally seek to clarify this. The police are obliged to act with objectivity from the start of an investigation and until the case is concluded, and shall attempt to uncover issues that are both in the accused person's favour and disfavour, regardless of whether his procedural position is as a suspect, charged person, indicted person or convicted person.

When an indictment has been brought, it is forwarded to the court for the case to be listed. As previously stated, investigations may still be undertaken and an additional indictment may be brought for new offences that may be heard concurrently with the offences in the indictment. An indictment may be amended, replaced with a new indictment or also be withdrawn. The latter may also take place after the main hearing has started but not after judgment has been passed.

With specific reference to Pocevicius's case, he has been charged by the police prosecuting authority with our most serious drugs offence. As we are seeking to extradite him from another country, the case was brought before the local district court, which issued an arrest order. Since the rogatory commission was brought by the public prosecutors, we have presented a provisional assessment that, on the basis of the existing evidence, grounds exist for issuing an indictment. This means that if no information subsequently emerges which would place the case in a different light, a request for extradition will have the clear intention of bringing the case before the court when the charged person has been extradited. However, as already mentioned, it is the Director General of Public Prosecutions who in a case like the present, has the competence to issue an indictment, which will not be done until the investigation of the case is considered to have been completed.

The investigation that remains in the present case is primarily to question the accused. Naturally, as a charged person in the case he is entitled to refuse to answer questions from the police and the court. Should he decide to make a statement, it may be relevant to undertake supplementary investigations in order to disprove or confirm his statement. For example, he has already told the Irish authorities that he was in Ireland on specific days during the period in question and substantiated this by means of statements from his Visa card account. For this reason, we request that statements be obtained for the above account for the entire period in question in order to see whether there were any movements on the said account to indicate his movements throughout this period. If corresponding information emerges in a potential

police interview, we will seek to disprove or confirm this. Consequently, the investigation is not yet complete and no indictment has been issued.

Should Pocevicius elect to claim his right not to make a statement (which we have no reason to assume) the case will have to be presented to the Director General of Public Prosecutions on the existing basis. If it is a requirement under Irish law that an indictment must have been issued in order for extradition to be effected, we will seek to conduct a police questioning in Ireland and terminate the investigation.

However, the investigation may also be continued after an indictment has been issued if information emerges to give grounds for so doing. We cannot forego our right not to continue the investigation, not least owing to the duty of objectivity that rests with the police and the police prosecuting authority to seek for information that may benefit the charged/indicted person.

In closing, I would like to mention that while reviewing previous documents, 1 noticed that there is an obvious translation error in our supplement to the rogatory commission dated 7 June 2012 on page two, last paragraph. The Norwegian text reads: "25-28. september 2008, det vil si i tiden for innførselen". This has been translated as "25-28 September 2008. i.e. the period immediately before the substance was imported." (The correct English translation is: "25-28 September 2008, i.e. the period when the substance was imported".)

Arising out of this the applicant raised two additional queries with the Norwegian authorities by means of a letter dated the 16th October, 2012. The letter asked:

"Please clarify the following issues:

Is there an intention to prosecute/ charge/indict Mr. Pocevicius if he is returned to Norway?

Does the Norwegian legal system require that you must first speak to a person before an indictment can issue?"

This yielded yet another supplement to the original Rotary Commission, dated the 19th October, 2012 (hereinafter "the supplement of the 19th October, 2012), containing a short further statement from Tormod Haugnes. Once again, no issue has been taken as to proper communication and authentication of this document but, in any event, and without going into the necessary particulars, the Court is again satisfied on the evidence before it that these issues have been properly addressed.

The supplement of the 19th October, 2013, states:

"The original rogatory commission has subsequently had several supplementary documents added. By letter dated 16 October, the Irish judicial authorities request further information relating to two issues, to which we provide the following reply:

"If I were to make a recommendation today to the Norwegian Director General of Public Prosecutions on the basis of the existing evidence. I would obviously recommend that an indictment be brought against Pocevicius. On this basis, it could safely be said that it is our clear intention to bring the case against Pocevicius before the court if he is extradited to Norway.

It is not a requirement under Norwegian law for a suspect to be questioned before bringing an indictment against him. No-one is obliged to make a statement to the police in Norway, and the suspect/charged person (and his/her next of kin and close family) are also not obliged to make a statement to any court of justice. Consequently, an indictment may be brought without the indicted person having made a statement. However, the charged person's statement is considered so important to the total evidential situation that it would contravene best prosecution practice not to question a suspect if he/she is willing to make a statement."

Further evidence adduced by the respondent
After the first day of hearing, and in the course of the adjournment, the respondent filed two further affidavits. These were sworn by Ms. Byrne on the 10th October, 2012, and on the 26th October, 2012, respectively.

The purpose of the affidavit of the 10th October, 2012, was, to the extent now relevant, to exhibit certain correspondence between her, as solicitor for the respondent, and the Chief State Solicitor, seeking confirmation that her client's offer to be interviewed here in Ireland, by the Norwegian police and to provide forensic samples, including a sample of his voice, had been communicated to the Norwegian authorities by the applicant. Moreover, in circumstances asserted in the affidavit, namely that such confirmation was not forthcoming, the affidavit goes on to exhibit another letter addressed directly to the Rogaland Chief of Police and dated the 9th August, 2012, reiterating the offers in question.

The affidavit of the 26th October, 2012, purports to address and dispute various pieces of circumstantial evidence upon which the Norwegian police purport to rely. The disputes in regard to these matters are not centrally relevant to the issues that I have to determine in this judgment, and in the circumstances it is unnecessary to review the affidavit in any detail. I have nonetheless considered the contents of this affidavit and have taken account of them to the extent that they may be relevant (specifically in the context of the s.15 objection).

Submissions on behalf of the respondent
It is contended that the respondent is wanted for the purposes of investigation rather than prosecution.

In support of this contention counsel for the respondent first points to the covering letter from the Royal Norwegian Embassy, Dublin to the Department of Foreign Affairs, dated the 13th July, 2011, which accompanied the request and supporting documentation. This letter states (*inter alia*): "*The Embassy would greatly appreciate the assistance of Irish authorities in following up on this matter, as the said person is the suspect in a serious drug crime now under investigation in Norway*." Counsel asks the Court to note that the respondent is described at that point as a "suspect" in respect of a crime that is "*now under investigation in Norway*".

Secondly, counsel for the respondent points out that there is a lack of the specificity required under Article 12 of the European Convention on Extradition 1957. He does so not to suggest that his client is prejudiced in any respect but rather to suggest that the

lack of specificity in relation to the charge very much points to the fact that the proceedings are only at the investigative stage. In this context he points to the bold heading above the summary of the facts of the case within the request itself, and asks the Court to note that it refers to "*reasonable grounds for suspicion*", and suggests that this in itself is a matter of some significance. He further suggests that those grounds may be summarised as follows: the Norwegian authorities clearly have evidence in relation to an importation of drugs. The suggestion is that a person involved in the importation attempted to dial the number of a telephone which was set up or registered in the name of the respondent, but that that person unintentionally mis-dials the number and gets through to a children's day nursery instead. Counsel submits that the stated basis for suspecting the respondent's involvement is so tenuous that the only reasonable inference is that at this stage the Norwegian authorities cannot have decided already, and indeed are nowhere near being ready to decide upon, whether or not to prosecute the respondent.

The plea in point of objection number two that the warrant is defective for lack of specificity was not proceeded with, or maintained, at the hearing.

Counsel for the respondent also points to the charge sheet, and in particular the portion thereof entitled "Grounds for the charge (etc.)", and submits it is significant that the allegation is framed in the most general terms, namely, that "*On Thursday, 25 September 2008, he imported approximately 5kg of methamphetamine to Norway from Lithuania*" . This is then immediately followed by the arrest order of the 25th November, 2008 issued by Stavanger District Court which directs that the respondent "*be arrested and made to appear before Rogaland Police District pursuant to Section 175(2) cf. Section 171 Nos 1 and 2 of the Norwegian Criminal Procedure Act and Article 95 of the Schengen Convention*" In counsel for the respondent's submission it is noteworthy that he was to be brought before Rogaland Police District and not before a court.

Thirdly, counsel for the respondent then referred the Court to the specific terms of s.171 (1) and (2) of the Norwegian Criminal Procedure Act, and sought to draw to the Court's attention that these provisions contain a power of arrest based upon suspicion. Moving then to s.175 of the same instrument, counsel submitted that the first paragraph thereof provides that the decision to arrest is made by the prosecuting authority. However, the second paragraph goes on to require that such a decision be made by a court "*if the suspect is staying abroad and the prosecuting authority wishes to apply for his extradition*", which is what happened in this case. Nevertheless, it was urged, the decision to arrest is still for the purpose of having the arrestee brought before the police in connection with their ongoing investigations and not for the purpose of bringing him before any court.

The Court's attention was then drawn to the court order of 12th January, 2010, which states: "*There are reasonable grounds for suspecting the charged person of having committed offences contrary to Section 162(1), cf. subsection 3, first sentence of the General Civil Penal Code, as described in the grounds for the charge."* It was submitted that again one can see that the extent of what the court has decided in issuing a warrant is to decide that there is a reasonable basis for a suspicion, and no more than that.

Fourthly, addressing the point that the respondent is stated to have been actually "charged", counsel for the respondent urged upon this Court that it would be in error to assume that to be "charged" in Norwegian law means the same thing as it means to be charged under Irish law. He referred to the judgment of O'Donnell J., giving judgment for the Supreme Court in *Minister for Justice, Equality and Law Reform v. Olsson* [2011] 1 I.R. 384 where, at paragraph 28, he cited with approval the following passage from the judgment of Lord Steyn in the United Kingdom House of Lords case of *Re Ismail* [1999] 1 A.C. 320 at pp. 326 to 327:-

> "Given the divergent systems of law involved, and notably the differences between criminal procedures in the United Kingdom and in civil law jurisdictions, it is not surprising that the legislature has not attempted a definition [of the word 'accused']… It is, however, possible to state in outline the approach to be adopted. The starting point is that 'accused' in s.1 of the Act of 1989 is not a term of art. It is a question of fact in each case whether the person passes the threshold test of being an 'accused' person. Next there is the reality that one is concerned with the contextual meaning of 'accused' in a statute intended to serve the purpose of bringing to justice those accused of serious crimes. There is a transnational interest in the achievement of this aim. Extradition treaties, and extradition statutes ought, therefore, to be accorded a broad and generous construction so far as the texts permits it in order to facilitate extradition: *Reg v. Governor of Ashford Remand Centre, Ex parte Postlethwaite* [1988] A.C. 924, 946-947. That approach has been applied by the Privy Council to the meaning of 'accused' in an extradition treaty: *Rey v Government of Switzerland* [1999] A.C. 54, 62G. It follows that it would be wrong to approach the problem of construction solely from the perspective of English criminal procedure, and in particular from the point of view of the formal acts of the laying of an information or the preferring of an indictment …
>
> It is not always easy for an English court to decide when in a civil law jurisdiction a suspect becomes an 'accused' person. All one can say with confidence is that a purposive interpretation of 'accused' ought to be adopted in order to accommodate the differences between legal systems. In other words, it is necessary for our courts to adopt a cosmopolitan approach to the question whether as a matter of substance rather than form the requirement of there being an 'accused' person is satisfied."

Counsel for the respondent submitted, on the authority of *Olsson* and In *re Ismail*, that in considering a word like "charged" and the concept of a charge in a case such as the present, and what these things in fact mean in the Norwegian context, it will be necessary for this Court to adopt a sophisticated, broad and indeed a "cosmopolitan" approach, as was commended by Lord Steyn. The Court should not assume that the charging of a person under the Norwegian system is the same as the charging of a person here in Ireland. It was urged that a closer analogy with what happens in Norway is the procedure under s. 42 of the Criminal Justice Act 1999, and the somewhat similar provisions providing for rearrest under s. 10 of the Criminal Justice Act 1984. It was urged that in this case you have a judge's warrant for producing a person before a police authority, and a prosecutor who cannot say for certain as to whether or not the matter will proceed to trial, and that is by definition an extradition where a person is being sought for investigative purposes and not for the purposes of prosecution.

In terms of relevant case law the Court was referred to *Brien v King and others* [1997] 1 I.L.R.M. 338. The case concerned a challenge by way of judicial review to an Order of the first named respondent, a judge of the District Court, approving the proposed extradition of the applicant to the United Kingdom under Part III of the Act of 1965 (since repealed). The judgment commences with a lengthy quotation from the grounding affidavit of the applicant's solicitors which sets out the facts. For the purposes of the present case the relevant paragraphs were:

> "9. The second witness to be called to support the application was D/Constable Robert Tonge of the Greater Manchester Police Force. He said he was investigating two charges of robbery on the 2 June 1993 and the 9 June 1993 at the West Bromwich Building Society, Manchester. He gave evidence that he was seeking David Brien in relation to those offences. He identified David Brien in the dock and stated that he was sought on foot of warrants A and B.

10. Upon cross-examination by counsel for the applicant he was asked if he was the investigating officer and he replied that he was one of the investigating officers. He was asked if David Brien had ever been arrested, questioned or charged with these alleged 1993 offences, to which he replied 'No'. He was then asked was it his intention to question the accused to which he replied 'Certainly it will be our intention to question him when he returns to the UK'.

11. I say that he was then re-examined by the representative of the Attorney General's office. He was asked, 'Is there enough evidence to prosecute should he not answer your questions'. In reply he said 'It is difficult to comment on that; it depends; it is not my decision'. He was asked was he aware of the existence of the warrants. To which he replied 'Yes'. He was asked 'What do they disclose an intention to do?' He did not answer. He was taken through the warrants, affidavits and various documentation but he failed to answer the question. Finally, it was put to him, 'it is intended to prosecute David Brien for the offences of robbery'. To which he answered 'Oh, Yes'."

At page 342 *et seq* of his judgment, Barr J. said:

"Mr. Leahy for the respondents fairly conceded that an order for extradition ought not to be made if the evidence establishes that a decision to prosecute a particular accused in respect of a crime or crimes referred to in the warrant on which extradition is sought had yet to be made at the time of the application to a court in this jurisdiction for extradition in respect of the alleged crime or crimes in question. However, he submitted that D/Constable Tonge's evidence taken as a whole does establish the requisite intention to prosecute and, therefore, the learned district judge was entitled to make the extradition order which it is now sought to impugn.

The duty of the District Court in the matter of considering applications for the extradition of a citizen to another jurisdiction to be tried for alleged crimes committed there was specified by Walsh J. in course of his judgment in *Ellis v. O'Dea(No.1)* [1989] I.R. 530 at p.537; [1990] I.L.R.M. 87 at p.91 as follows:-

> 'What is involved in the present case is the undoubted residual jurisdiction of the District Court to protect the constitutional rights of any person appearing before it. All persons appearing before the courts of Ireland are entitled to protection against all unfair or unjust procedures or practices. It goes without saying therefore that no person within this jurisdiction may be removed by order of a court or otherwise out of this jurisdiction, where these rights must be protected, to another jurisdiction if to do so would be to expose him to practices or procedures which if exercised within this State would amount to infringements of his constitutional right to fair and just procedures. The obligation of the State to save its citizens from such procedures extends to all acts done within this jurisdiction and that includes proceedings taken under the Extradition Act 1965. As the Extradition Act 1965 is a post-constitutional statute. It must be construed as not permitting persons appearing before our courts to be by order of our courts subjected to or exposed to any judicial process or procedure inside or outside this jurisdiction, which in this jurisdiction would amount to a denial or an infringement of the constitutional right to fair procedures. Any statute which would expressly seek to do so, or which by necessary implication would give rise to such an interpretation must necessarily be unconstitutional. There is nothing in the Act of 1965 which could be construed as purporting to permit to be exposed any person, the subject of extradition proceedings, to procedures which the Constitution would not tolerate. In other words there must be not only a correspondence of offences but also a correspondence of fair procedures. No procedure to which the extradited person could be exposed may be one which, if followed in this State, would be condemned as being unconstitutional.'

This *dictum* makes it clear that the duty of the district judge on such application is not restricted to an enquiry as to whether the requirements contained in the Extradition Act 1965 have been complied with, but also includes a duty to protect the constitutional rights of the person against whom extradition has been sought. This includes an obligation, where the evidence raises a reasonable doubt in the matter, to enquire into whether, if the order is granted, the police authorities who sought it have a real intention to bring the person named in the warrant forthwith before the court which issued it for the purpose of prosecuting the extraditee in respect of the offence or offences specified in the warrant.

The net issue for consideration by me is whether the evidence before the first named respondent when she made the extradition order raised a reasonable doubt as to the intention at that time of the Manchester police to prosecute the applicant in respect of the offences specified in the warrants. If the evidence gave rise to such a doubt then she ought not to have made the order, because in Irish law a warrant, such as those in the present case, ought not to be applied for or issued by a court unless the investigating police, on whose behalf the application is made, have decided on sufficient evidence to prosecute the person in respect of whom the warrant is sought. Such warrants ought not to be applied for by the police on a speculative basis in the hope that when a suspect is interrogated after arrest on foot of the warrant he will furnish information which is sufficient to justify his prosecution for the offence alleged."

Counsel urges that even making allowances for the historical context the underlying principle for which he submits this case is authority remains intact, i.e., that extradition shall not be ordered where it is effectively for the purposes of investigation. This remains the position in Ireland, even under the European Arrest Warrant system which now operates in lieu of extradition in respect of those countries that are members of the EU (which Norway is not), as is clear from various judgments of members of the Supreme Court in the case of *Minister for Justice, Equality and Law Reform v Bailey* [2012] IESC 16; [2012] 3 JIC 0101(Unreported, Supreme Court, 1st March, 2012).

That the said principle remains a matter of Irish State policy is reflected in the reservation entered to the Framework Decision 2002, as recorded in the document of 6/7 December 2001 entitled "Corrigendum to the Outcome of Proceedings concerning the Proposal for a Council Framework Decision on the European arrest warrant and the surrender procedures between Member States" (which forms part of the relevant *travaux préparatoire* on the Framework Decision); and is further reflected in the terms in which s. 21A of the European Arrest Warrant Act 2003 (hereinafter the Act of 2003) was enacted.

Counsel submits that the policy, thus reflected, is based upon a long standing view that it would be unconstitutional to surrender somebody in circumstances where they would possibly, and indeed probably, face incarceration for a substantial period of time while an investigation, which might or might not lead to them being put on trial, is carried out. It was urged that so seriously do we take this principle, which counsel characterises as being a constitutional *sine qua non*, that even in the Irish domestic context, under the Criminal Justice Act 1984 (as amended), detention for the purposes of investigation is limited to an absolute maximum of seven days, and after just three days it requires to be authorised by a court.

It was also urged that the fact that the respondent might be entitled to apply for bail in Norway is neither here nor there in terms of

the applicability of the fundamental and underlying principle, because he would be applying for bail in the context of his detention for investigation and not his detention for the purposes of prosecution. It would be fundamentally wrong for the Irish State to put him in the position of having to do so. It was urged that applying the rationale of the decision *People (Attorney General) v. O'Callaghan* [1966] I.R. 501 the state could not be complicit in surrendering the respondent solely for the purposes of investigation in circumstances where he would be detained, if only pending the making of a bail application (the outcome of which would be at best uncertain), because to do so would be an action inconsistent with, and disrespectful of, the respondent's presumption of innocence.

Counsel further roots his objection in section 9 of the Act of 1965 which states:

> "Where a country in relation to which this Part applies duly requests the surrender of a person who is being proceeded against in that country for an offence or who is wanted by that country for the carrying out of a sentence, that person shall, subject to and in accordance with the provisions of this Part, be surrendered to that country."

Counsel argues that surrender is only possible where a respondent is being "*proceeded against*" (although he concedes that the matter is not as clear as he would like it to be in the absence of a definition of what "*proceeded against*" means.) It was submitted that proceedings connotes court proceedings and that a person who is being proceeded against is a person in respect of whom court proceedings are being taken and not a person who is wanted principally for the purpose of assisting with enquiries. Counsel stated that he was not saying that the seeking of a person's assistance with enquiries could not be a part of proceedings (in the sense of the word "proceedings" that he was contending for) taken against such a person, as indeed was the situation in *Olsson*. However, the seeking of a person's assistance with enquiries cannot of itself, and without more, be deemed to be proceedings taken against that person.

Counsel points out that because the European Convention on Extradition of 1957 predates the Act of 1965, it is unsurprising that many of its provisions are mirrored in the Act of 1965. Accordingly, the terms of s. 9 of the Act of 1965 largely reflect those of Article 1 of the Convention.

Counsel for the respondent referred again to the case of *Minister for Justice, Equality and Law Reform v. Olsson* [2011] 1 I.R. 384 and drew attention to the facts as summarised:

> "The respondent was a citizen of Sweden in this jurisdiction against whom the Swedish authorities had issued a European arrest warrant in relation to four offences for which they intended to prosecute him. The Swedish police were required to interview the plaintiff in order to formally conclude their criminal investigation, after which the final decision on whether or not to prosecute him would be taken."

Counsel submitted that the evidence was very clear that this was really a formal procedural step and that it was going to result in Mr. Olsson being charged. It therefore seemed to be a peculiar artefact of Swedish law that the police were not allowed to conclude their investigation and move matters to the next stage until the step of interviewing the suspected person had been taken. It was suggested that the evidence in the present case does not go that far.

Moreover, in so far as it is suggested that the respondent may have been in Ireland during at least part of the material timeframe, the respondent further relies upon the territoriality exception contained in s. 15 of the Act of 1965 which states:

> "Extradition shall not be granted where the offence for which it is requested is regarded under the law of the State as having been committed in the State."

In this context counsel for the respondent points to upon s. 20 of the Misuse of Drugs Act 1977 which states:

> "20.—(1) Any person who aids, abets, counsels or induces the commission in a place outside the State of an offence punishable under a corresponding law in force in that place shall be guilty of an offence.
>
> (2) In this section "***a corresponding law***" means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside the State to be a law providing for the control or regulation in that country of the manufacture, production, supply, use, exportation or importation of dangerous or otherwise harmful drugs in pursuance of any treaty, convention, protocol or other agreement between states and prepared or implemented by, or under the auspices of, the League of Nations or the United Nations Organisation and which for the time being is in force.
>
> (3) Any statement in a certificate mentioned in subsection (2) of this section as to the effect of the law mentioned in the certificate or any such statement that any facts constitute an offence against the law so mentioned shall, for the purposes of any proceedings under this Act, be evidence of the matters stated."

It is the respondent's case that by virtue of s.20 of the Misuse of Drugs Act 1977 the crimes being attributed to him are to be regarded for jurisdictional purposes as having been committed within the Irish State, regardless of whether his participation was wholly within the territory of Norway, or partly in Ireland and partly in Norway, and that in those circumstances s.15 of the Act of 1965 applies and he cannot be extradited to Norway.

The respondent further submits that it would constitute a disproportionate interference with the respondent's rights, including his right to liberty, to surrender him in circumstances where he has volunteered to make himself available here in Ireland for the purpose of being interviewed by the Norwegian police. It was submitted that in circumstances where he is consenting to being interviewed the Norwegian authorities have no need to have resort to any legal measures in order to facilitate such an interview, and certainly they have no need to have recourse to extradition. It is not even necessary for them to invoke or seek to avail of the Mutual Assistance Convention, and the legislation implementing it. Members of the Norwegian police can either travel to this country to conduct the interview, or alternatively interview the respondent from Norway utilising a video link.

In support of his proportionality argument counsel for the respondent relies upon a judgment of the High Court of England and Wales sitting as a Divisional Court in case of *Assange v. Swedish Prosecution Authority* [2011] EWHC 2849 (Admin). The judgment of the Divisional High Court was delivered by the President of the Queens Bench Division, Sir John Thomas who stated, *inter alia*:

> "155. Mr Assange submitted that even if under the EAW he was technically a person accused of offences, it was disproportionate to seek his surrender under the EAW. That was because, as he had to be questioned before a decision was made on prosecution, he had offered to be questioned over a video link. It would therefore have been proportionate to question him in that way and have reached a decision on whether to charge him before issuing the EAW.

> 156. It is clear from the report of the European Commission on the Implementation of the Framework Decision (COM(2011)175, Final, 11 April 2011), that there was general agreement between the member states, as a result of the use of the EAW for minor offences technically within the Framework Decision, that a proportionality check was necessary before a judicial authority in a Member State issued an EAW. This statement was a strong reminder to judicial authorities in a Member State contemplating the issue of an EAW of the need to ensure that the EAW was not used for minor offences. It is not a legal requirement. There is, however, almost universal agreement among prosecutors and judges across Europe that this reminder to conduct a proportionality check should be heeded before an EAW is issued.
>
> 157. It was submitted on behalf of Mr Assange that proportionality was also a requirement of the law on the following basis. The Framework Decision as an EU instrument is subject to the principle of proportionality; reliance was placed on the effect of the Charter of Fundamental Rights, *R(NS) v SSHD* [2010] EWCA Civ 990 and the decision of the Higher Regional Court in Stuttgart in *General Public Prosecution Service v C* (25 February 2010), as reported at [2010] Crim LR 474 by Professors Vogel and Spencer. We will assume that Mr Assange's argument that an EAW can only be used where proportionate, complex as it is, is well founded without lengthening the judgment still further to express a view on it.
>
> 158. However, the argument fails on the facts. First, in this case the challenge to the issue of the warrant for the arrest of Mr Assange failed before the Court of Appeal of Svea. In those circumstances, taking into account the respect this court should accord the decision of the Court of Appeal of Svea in relation to proceedings governed by Swedish procedural law, we do not consider the decision to issue the EAW could be said to be disproportionate
>
> 159. Second and in any event, this is self-evidently not a case relating to a trivial offence, but to serious sexual offences. Assuming proportionality is a requirement, it is difficult to see what real scope there is for the argument in circumstances where a Swedish Court of Appeal has taken the view, as part of Swedish procedure, that an arrest is necessary.
>
> 160. We would add that although some criticism was made of Ms Ny in this case, it is difficult to say, irrespective of the decision of the Court of Appeal of Svea, that her failure to take up the offer of a video link for questioning was so unreasonable as to make it disproportionate to seek Mr Assange's surrender, given all the other matters raised by Mr Assange in the course of proceedings before the Senior District Judge. The prosecutor must be entitled to seek to apply the provisions of Swedish law to the procedure once it has been determined that Mr Assange is an accused and is required for the purposes of prosecution. Under the law of Sweden the final stage occurs shortly before trial. Those procedural provisions must be respected by us given the mutual recognition and confidence required by the Framework Decision; to do otherwise would be to undermine the effectiveness of the principles on which the Framework Decision is based. In any event, we were far from persuaded that other procedures suggested on behalf of Mr Assange would have proved practicable or would not have been the subject of lengthy dispute."

While accepting that a proportionality argument failed in the particular circumstances of Mr. Assange's case, counsel for the respondent contends that the important point is that the Divisional Court was prepared to accept the underlying proposition advanced on his behalf, namely that a European arrest warrant could only be used where it was proportionate to do so. He argues that, there is no reason in principle why the same should not apply to traditional extradition requests.

The Court is also asked to take into account in considering the question of proportionality that there has been a certain amount of delay in this case. It is pointed out that the letter from the Norwegian Embassy dated the 13th July, 2011, accompanying the request refers to earlier correspondence between the Embassy and the Irish Department of Foreign Affairs dated the 14th July, 2009.

Submissions on behalf of the applicant

Counsel for applicant asks the Court to note that the objection to the effect that the request for extradition is a disproportionate measure in the light of the respondent's offer to submit to questioning is premised on the correctness of his contention that the Norwegian authorities' primary purpose in seeking his extradition is to question him. However, counsel submits, there is a fundamental disagreement between the applicant and the respondent as to what is the primary purpose of the request. Without conceding that the proportionality of a proposed extradition measure could ever arise for consideration, it most certainly could not arise unless the respondent is correct in his basic premise.

Turning to the issue of the purpose for which extradition is being sought, and counsel for the respondent's reliance on the reference to "being proceeded against" in s. 9 of the Act of 1965, counsel for the applicant points out that somewhat similar language appears in Article 1 of the European Convention on Extradition 1957 (which deals with the obligation to extradite), and she submits that the wording of s.9 of the 1965 Act obviously reflects that.

Article 1 provides:

> "The Contracting Parties undertake to surrender to each other, subject to the provisions and conditions laid down in this Convention, all persons against whom the competent authorities of the requesting Party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order."

However, s. 9 of the Act of 1965 is not to be read in isolation. It is to be construed in the context of the Act of 1965 read as a whole. It is preceded in the same Act by s. 8 dealing with the application of Part II and which refers to "persons wanted for prosecution or punishment". Both s.8 and s.9 appear within Part II of the Act of 1965, and they are clearly intended to be read together. Accordingly, the reference to "a person who is being proceeded against" in s. 9 must mean, in so far as unconvicted persons are concerned, a person who is being, or is to be, prosecuted. That understanding does not mean, however, that a restriction as narrow as that imposed in the European arrest warrant context by s. 21A of the Act of 2003 applies in the extradition context.

Counsel contends that s.21A is very differently framed provision, and in support of this cites the following passage from the judgment of Fennelly J. in *Minister for Justice, Equality and Law Reform v. Bailey* [2012] IESC 16 (Unreported, Supreme Court, 1st March, 2012) where, having in previous paragraphs considered the requirement in s. 21A of a decision to "try", he states at para 114:

> "I am, therefore, compelled to agree that the section prohibits the surrender of the appellant. If this section were not in such terms, it could be plausibly argued that, looking at the French criminal procedure in its entirety, and even accepting that it is still only at the stage of instruction, the surrender of the appellant is sought "for the purposes of conducting a criminal prosecution…" A broad, purposive and conforming interpretation could well lead to that result. But the section is quite explicit. It is not open to the Court, by means of conforming interpretation, to circumvent the clear terms of s.

21A."

However, it is conceded by the applicant that a person's extradition cannot be legitimately sought solely in connection with progressing an investigation, and in that regard counsel for the applicant points to the following passage from the judgment of Murray J. in the *Bailey* case, where the learned judge stated:

> "It is a long established principle of extradition law that persons are not extradited for the purposes of questioning them as suspects but for the purpose of charging and prosecuting them with a criminal offence so that they may be brought to trial in a Court of law."

That statement mirrors and is wholly consistent with the earlier observation of Murray C.J. (as he then was) in *Minister for Justice, Equality and Law Reform v. McArdle* [2005] 4 I.R. 260 where he stated, at pp 266 to 267 :-

> "[19] …. The surrender of a person for the purpose of prosecution and trying him or her on a criminal offence means that the decision taken by the relevant authority to prosecute and try that person is not contingent on the outcome of further factual investigation. That requirement does not of course preclude the pursuit of any continuing or parallel investigation into the circumstances of the offence. It means that the decision to prosecute is not dependant on such further investigation producing sufficient evidence to justify putting a person on trial."

All of that being said, counsel for the applicant has strongly urged upon the Court that in the present case, though some investigative steps remain to be taken, Mr. Pocevicius is the subject of a process that will ultimately lead to him being put on trial, barring some unanticipated or unseen development. Mr. Tormod Haugnes has stated in the supplement of the 12th September, 2012, that "*[s]ince the rogatory commission was brought by the public prosecutors, we have presented a provisional assessment that, on the basis of the existing evidence, grounds exist for issuing an indictment. This means that if no information subsequently emerges which would place the case in a different light, a request for extradition will have the clear intention of bringing the case before the court when the charged person has been extradited."* While only the Director General of Public Prosecutions can make the formal decision to indict Mr. Pocevicius that is a procedural requirement. The reality is that the Director General acts upon the recommendations of the public prosecutor, and Mr. Haugnes, the public prosecutor in this case, has further stated in the supplement of the 19th October, 2013, that "*If I were to make a recommendation today to the Norwegian Director General of Public Prosecutions on the basis of the existing evidence. I would obviously recommend that an indictment be brought against Pocevicius. On this basis, it could safely be said that it is our clear intention to bring the case against Pocevicius before the court if he is extradited to Norway*."

Counsel for the applicant contends that in the light of the above the Court can be satisfied that Mr Pocevicius is being proceeded against in Norway, and that there is a clear present intention that he will be brought before a Court and tried for the offence with which he is charged and which remains under investigation. However, the critical point is that a final decision in that regard will not be dependent on such further investigation producing sufficient evidence to put him on trial.

Counsel for the applicant also relies heavily on those passages from the Supreme Court's decision in *Minister for Justice, Equality and Law Reform v Olsson* [2011] 1. I.R. 384 cited by the respondent, as well as the following additional passages at p.399-400:

> [34] The requirement of the relevant decision, intention or purpose can best be understood by identifying what is intended to be insufficient for the issuance and execution of a European arrest warrant. A warrant issued for the purposes of investigation of an offence alone, in circumstances where that investigation might or might not result in a prosecution, would be insufficient. Here it is clear that the requested person is required for the purposes of conducting a criminal prosecution (in the words of the Framework Decision) and that the Kingdom of Sweden intends to bring proceedings against him, (in the words of s. 10 of the Act of 2003) Consequently it follows that the existence of any such intention is virtually coterminous with a decision to bring proceedings sufficient for the purposes of s. 21A. As Murray C.J. pointed out in *Minister for Justice v. McArdle* [2005] IESC 76, [2005] 4 I.R. 260, that result is not altered by the fact that there may be a continuing investigation, or indeed that such investigation will be assisted by the return of the requested person.
>
> [35] It would be entirely within the Framework Decision and the Act of 2003 if, after further investigation, the prosecution authorities decided not to prosecute because, for example, they had become convinced of the requested person's innocence. There would still have been an "intention" to prosecute, and a decision to do so at the time the warrant was issued and executed. Accordingly, the warrant would have been issued for the purposes of conducting a criminal prosecution. What is impermissible is that a decision to prosecute should be dependent on such further investigation producing sufficient evidence to put a person on trial. In such a situation there is in truth no present "decision" to prosecute, and no present "intention" to bring proceedings. Such a decision and intention would only crystallise if the investigation reached a certain point in the future. In such a case any warrant could not be said to be for the purposes of conducting a criminal prosecution: instead it could only properly be described as a warrant for the purposes of conducting a criminal investigation. In such circumstances, a court would be satisfied under s. 21A of the Act of 2003, as amended that no decision had been made to charge or try the requested person.
>
> [36] It is noteworthy, that on the evidence in this case, the position in relation to the respondent is not by any means unusual in the Swedish system, and indeed represents the norm in a number of European countries. …"

Counsel for the applicant submitted that while Norway is not a European Arrest Warrant country the system as described in evidence is not far removed from that in the neighbouring jurisdiction of Sweden as described in Olsson, and so the remark made by O'Donnell J. in paragraph 36 of his judgment and quoted above is apposite in the case of Norway as well. Counsel for the applicant's core argument is that in extradition, as is the case under the European arrest warrant system, "*[w]hat is impermissible is that a decision to prosecute should be dependent on … further investigation producing sufficient evidence to put a person on trial*." She further urges that that is not the situation in the present case. On the contrary, at the time of the extradition request in this case the Norwegian public prosecutor considered, and still considers, that he has sufficient evidence to recommend to the Director General of Public Prosecutions that an indictment should be issued against Mr. Pocevicius, and indeed, it may be inferred, he is confident that if sought an indictment would indeed issue. However, in accordance with what is regarded as best practice, it is not usual in Norway to seek an indictment until the investigation, including interviewing the suspect, is complete and that is the only reason why he has not done so to date.

The Court's Decision

Having carefully considered the arguments presented by both sides I find that I am persuaded by those of the applicant, and I am satisfied that Mr. Pocevicius's extradition is not being sought, solely, or even primarily, for the purposes of progressing the investigation in this case. The Court is satisfied that he is in fact wanted with a view to his prosecution although a final decision that

he should be indicted has not yet been made by the competent authority. He is at present a suspect, but a suspect whose prosecution is intended. The fact that further investigations still have to be carried out does not affect this.

The fact that he has been "charged" is not determinative of matters. Indeed, I believe that counsel for the respondent is correct in his characterisation of the Norwegian charging process as being for the facilitation of police investigations rather than for the purpose of bringing a person before any court. However, as was explained by Mr. Tormod Haugnes, the public prosecutors have received the file in Mr. Pocevicius's case from the police prosecuting authority with a recommendation in respect of prosecution, and so it has moved to the next phase. The public prosecutors have in turn considered the file and agree that there should be a prosecution.

It is considered that on present evidence there is sufficient to recommend to the Director General of Public Prosecutions that an indictment should issue. This Court, being completely unfamiliar with Norwegian criminal law, criminal procedure and laws of evidence, must take that assessment at face value in the absence of any expert evidence to the contrary.

There is therefore a present intention by the party with what might be characterised as "carriage of the case" to prosecute Mr. Pocevicius. I have given deep consideration to whether, as was urged by counsel for the respondent in rejoinder, the fact that only the Director General of Public Prosecutions is competent to issue an indictment is fatal to the applicant's case. In other words is it necessary that there should be evidence that the only party competent to issue an indictment against Mr. Pocevicius should have a present intention to prosecute. On balance, I do not believe that it is.

As the Court understands it from the evidence of Mr. Haugnes the Director General of Public Prosecutions and the public prosecutor are part of the same service, i.e., the Norwegian Prosecution Service, albeit operating at different levels. They would therefore share a common approach to the assessment of evidence, rendering it likely that a recommendation would be followed in most cases. The public prosecutor has carriage of the case (as I have characterised it), and will retain carriage of the case if or when an indictment is issued. While one must assume that the Director General of Public Prosecutions will make his own assessment of the evidence, and will not just rubber stamp the recommendation of the public prosecutor, and possibly could refuse to issue an indictment, the reality is that refusal to issue an indictment would be an unlikely eventuality if there are no unforeseen developments in the case.

The situation in Norway, in which the Director General of Public Prosecution receives a file with a recommendation for the issuing of an indictment from the public prosecutor, is not therefore analogous to the situation in Ireland where the Director of Public Prosecutions receives a file from An Garda Siochana with a recommendation (as was submitted by counsel for the respondent in rejoinder).

I am satisfied that notwithstanding that aspects of the investigation remain to be addressed, including the interviewing of Mr. Pocevicius, he is being proceeded against at the present time, within the meaning of s. 9 of the Act of 1965 and Article 1 of the European Convention on Extradition 1957, in as much as the public prosecutor has a present intention to recommend that an indictment be preferred against him and to seek to bring him to trial for the offence referred to in the Rogatory Commission. Moreover, while the preferment of a formal indictment is only within the competence of the Director General of Public Prosecutions, a decision by that officer to do so will not be dependent on further investigation producing sufficient evidence to put Mr. Pocevicius on trial.

The Court therefore rejects the objection to the effect that the respondent is wanted solely, or primarily, for the purposes of investigation. In the Court's view Mr. Pocevicius's extradition would not contravene his rights, including his right to liberty, under the Constitution of Ireland or be contrary to the legislative and public policy of this country.

Further, I am of the view that counsel for the applicant is correct in her submission that no issue of proportionality can arise in circumstances where there is an intention to prosecute the respondent and he is being proceeded against in that connection.

Turning then to the objection based upon s. 15 of the Act of 1965, I have previously expressed the view obiter dictum in a case of *Minister for Justice and Equality v. Connolly* [2012] IEHC 575 (Unreported, High Court, Edwards J., 6th December, 2012) that s. 20 of the Misuse of Drugs Act 1977 is both territorial and extra territorial in its application. While it is extra territorial in that it allows a person to be tried in Ireland for aiding, abetting, counselling or inducing the commission in a place outside the state of an offence punishable under a corresponding law in force in that place, it is territorial in as much as the act constituting that aiding, abetting, counselling or inducing must be an act done within the territory of Ireland. While the respondent has sought to suggest in his affidavit that he may have been in Ireland on the 25th September, 2008, the act or conduct alleged against him is possession (in the sense of exercising control) of drugs in Stavanger on that date. Whether or not Mr. Pocevicius was in Norway or in Ireland, or in both places, on the date in question is not determinative of whether the offence to which the extradition request relates could be tried in Ireland. In order for the offence to be triable in Ireland it would have to be established that some act or conduct amounting to aiding, abetting, counselling or inducing the commission of the drugs offence charged against him in Norway was committed by the respondent while he was in Ireland. There is, however, nothing in the evidence capable of establishing as a matter of probability that any act or conduct of that sort was committed in Ireland. At most there is a suggestion, which is still being examined, that Mr. Pocevicius may have been in Ireland on the date in question. The evidence, such as it is, does not establish that anything specific was done in Ireland to exercise control over drugs imported, or to be imported, into Norway on that date. Accordingly, the Court is not satisfied that the offence in question is regarded under the law of Ireland as having been committed in this state. I therefore reject the objection based upon s. 15 of the Act of 1965.

Point number four in the points of objection was not maintained or pursued at the hearing. Moreover, delay as pleaded in point of objection number six was not pursued as a stand alone ground of objection, but rather was relied upon solely as an additional factor to be taken into account in the event of the Court having to consider the proportionality argument. As previously indicated, proportionality does not fall for consideration in the circumstances of this case. Finally, the further claim at point of objection number six that to surrender the respondent would breach his constitutional right to a fair trial was also not maintained or pursued at the hearing.

The Court is disposed in all the circumstances to make an order pursuant to s. 29 (1) of the Act of 1965 as amended committing the respondent to a prison there to await the order of the Minister for his extradition.