

THE HIGH COURT

[2010 No. 346 EXT]

IN THE MATTER OF THE EXTRADITION ACTS 1965 to 2001

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

AND

N.S.S

RESPONDENT

JUDGMENT of Mr. Justice Edwards delivered on the 29th day of April, 2015.**1. Introduction**

1.1 In these proceedings the Russian Federation (hereinafter Russia) seeks the extradition of the respondent with a view to prosecuting him and placing him on trial in Russia for an offence contrary to article 105(1) of the Criminal Code of the Russian Federation, namely homicide involving the intentional causing of death to another person.

2. Legislation and international agreements

2.1 The application of Part II of the Extradition Act 1965 (hereinafter the Act of 1965) is governed by s.8 thereof.

2.2 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—

(a) in relation to that country, or

(b) in relation to a place or territory for whose external relations that country is (in whole or in part) responsible."

2.3 Both Ireland and Russia are parties to the European Convention on Extradition 1957 and on the 19th December, 2000, the Minister for Foreign Affairs applied Part II of the Act of 1965 to Russia by means of the Extradition Act 1965 (Application of Part II) Order, 2000 (S.I. No. 474 of 2000). Notice of the making of that Order was duly published in An Iris Oifigiúil on the 6th February, 2001.

S.23 of the Act of 1965 provides that:

"...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."

2.4 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.

2. The request shall be supported by:

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;

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

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."

2.5 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.”

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

2.7 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.”

2.8 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 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.”

3. The request for extradition in this case – legal formalities

3.1 The Court is satisfied on the evidence before it that the respondent’s extradition has been duly requested, by means of a letter of request accompanied by supporting documents, dated the 30th June, 2008, from the Prosecutor General’s Office of the Russian Federation addressed to Mr Paul Gallagher, Attorney General of Ireland, and communicated to the Irish Department of Foreign Affairs by Diplomatic Note No 57/N by the Embassy of the Russian Federation in Dublin on the 22nd August, 2008.

3.2 This initial request was later supplemented by additional documentation consisting of a further letter, accompanied by supporting documents, dated the 31st March, 2009, from the Prosecutor General’s Office of the Russian Federation addressed to Mr Brian Lucas, Mutual Assistance and Extradition Department, Ministry of Justice, Equality and Law Reform, Republic of Ireland, and communicated to the Irish Department of Foreign Affairs by Diplomatic Note No 22/N by the Embassy of the Russian Federation in Dublin on the 22nd April, 2009.

3.3 The said initial request was yet further supplemented by more additional documentation consisting of a further letter, accompanied by supporting documents, dated the 10th March, 2010, from the Prosecutor General’s Office of the Russian Federation addressed to Mr Brian Lucas, Mutual Assistance and Extradition Department, Ministry of Justice, Equality and Law Reform, Republic of Ireland, and communicated to the Irish Department of Foreign Affairs by Diplomatic Note No 29/N by the Embassy of the Russian Federation in Dublin on the 25th March, 2010.

3.4 The Court is satisfied that the initial letter of request accompanied by supporting documents, and the additional documentation provided on a supplementary basis and consisting of the two further letters particularised above, each accompanied by further supporting documents, are all to be considered together as a single request, that they were so treated by the Minister, and that the 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.

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

3.6 The Court has had produced to it a certificate of the Minister for Justice and Equality, dated the 1st September, 2010, 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 the 13th 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 the 12th July 1988,

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

AND WHEREAS on the 19th 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 the Russian Federation,

AND WHEREAS I have on the 30th March 2010 received a request duly made by the Russian Federation in accordance with Part II of the Extradition Act 1965 and the said Convention for the extradition of N.S.S (alias I.F.) which has been duly communicated by its Embassy,

NOW I, Dermot Ahern, Minister for Justice and Law Reform hereby certify that the aforesaid request has been duly made by and on behalf of the Russian Federation and received by me in accordance with Part II of the Extradition Act 1965."

3.7 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.

3.8 I am satisfied in the present case that the Court has had produced to it in respect of the offence for which the respondent's extradition to Russia 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 Russian Federation. The documents accompanying the letter dated the 30th June, 2008, from the Prosecutor General's Office of the Russian Federation addressed to Mr Paul Gallagher, Attorney General of Ireland, included the following:

- Initiation of criminal proceedings and acceptance of a case into execution, dated 4th August, 1998, by Investigator M.A.K. of the Khoroshevsky Inter-District Prosecution Office of Moscow;
- Decision of crimination, dated 25th January, 1999, by Investigator M.A.K. of the Khoroshevsky Inter-District Prosecution Office of Moscow;
- Decision of quest of accused, dated 25th January, 1999, by Investigator M.A.K. of the Khoroshevsky Inter-District Prosecution Office of Moscow.;
- Decision of election of the preventative measure of custodial detention, dated 3rd March 2004, by Justice O.U. Veselova of Khoroshevsky District Court of Moscow with the participation of Khoroshevsky Inter-District Deputy Prosecutor, imposed under article 108 of the Criminal Code of the Russian Federation ;

3.9 In truth the Court only requires to have the latter document for the purposes of being satisfied with respect to s. 25(1)(a) of the Act of 1965, although the three earlier documents also furnished provide a useful procedural history and contextualise the issuance of the decision of the 3rd March, 2004, to impose the preventative measure of custodial detention. I am satisfied, having regard to the terms of article 108 of the Criminal Code of the Russian Federation, the text of which is contained amongst the additional documents supporting the request furnished with the letter of the 31st March, 2009, that the decision of the 3rd March, 2004, to impose the preventative measure of custodial detention is an order having the same effect as a warrant of arrest. Moreover, the original of this decision document in the Russian language that accompanied the request bears both the seal of the Khoroshevsky District Court of Moscow and the signature of Justice O.U. Veselova. It also appears to bear the seal of the Khoroshevsky Inter-District Prosecution Office, and a second signature which the Court infers to be that of the deputy prosecutor or some other official attached to the prosecutor's office. No issue has been taken as to the sufficiency of the authentication provided, and I am satisfied in any event that it is sufficient.

3.10 I am further satisfied that the Court has had produced to it a statement of the 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 Russian Federation. The decision of crimination dated the 25th January, 1999, contains the necessary details, and is in the following terms:

"DECISION

Of crimination

Moscow January 25th 1999

Khoroshevsky Inter-district Prosecution Office of Moscow Investigator K.M.A., having considered the case #215668 established as follows:

N.S.S. caused premeditatedly death to another human being.

Thus, on August, 2nd 1998 approximately at 15 o'clock on the bank of the Moskva-river while drinking alcohol spirits and on the ground of hostile attitude to B.I.P., he caused the former with a penetrating stab and cut wound having damaged abdominal aorta and neck front surface, then escaped from the site of occurrence. B.I.P. was transported to the City Hospital # 52 on April [sic] 2nd 1998 at 16.50 where he died at 18.35 of acute loss of blood caused by the above said injuries not having regained consciousness. Such injuries are qualified as injuries, which constitute grave harm to one's health.

I.e. N.Sh. committed a crime, envisaged in art. 105 para.1CC RF.

Under the abovesaid and following art. 143 and 144 CCP RSFSR

Decided as follows:

To criminate N.S.S. for this case, accuse him of a crime envisaged in art. 105 para. 1 CC RF, which shall be notified to him on receipt.

To send a copy of this decision to Khoroshevsky Inter-district Prosecution Office of Moscow.”

3.11 It is accepted by counsel for the respondent that the reference to “April 2nd” in the translation of this, and other supporting documents, is a typographical error and/or an artefact of the translation process in circumstances where the correct date of August 2nd appears in the originals in the Russian language.

3.12 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 Russian Federation, and in particular the text of Article 105(1) of the Criminal Code of the Russian Federation. (the Russian Code). The Court has also been provided with the texts of article 15 and article 78 of the Russian Code, concerning the categorisation of crimes, and relevant limitation periods, under the Russian Code, as well as article 108 of the Russian Code, dealing with imprisonment as a preventative measure.

3.13 The request for extradition in this case was accompanied by a description of the person concerned together with a photograph. Counsel for the respondent takes no issue with the identification details provided. In the circumstances I am satisfied that the requirements of s. 25(1)(d) were fulfilled.

3.14 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.

4. The Substance of the Request and Procedural History of the Case

4.1 The substance of the request is that the respondent, a Moldovan citizen now living in Ireland, is wanted in Russia on suspicion of having committed the murder of a Mr I.P.B. on the 2nd August, 1998, on the bank of the Moskva river by intentionally stabbing the said Mr I.P.B. and thereby fatally injuring him. Following the discovery of Mr I.P.B.'s body, a criminal investigation (known for the purposes of Russian law as the “preliminary investigation”) was instituted by the Khoroshevsky Inter-District Prosecution Office of Moscow on the 4th August, 1998. In the course of that preliminary investigation the respondent was identified as a suspect and was formally accused of the crime by the Khoroshevsky Inter-District Prosecution Office of Moscow on the 25th January, 1999. On the same date, and in circumstances where the respondent could not be located by the authorities and was believed to have absconded, a formal international search or “quest” for him was initiated by the Khoroshevsky Inter-District Prosecution Office of Moscow based upon his last known address abroad, and the preliminary investigation was suspended until he could be located. In addition, and on the same date, it is indicated in the papers that the prosecutor “elected a preventative measure of custodial detention” in respect of the respondent. The Court interprets this, following a consideration of the papers as a whole, as meaning that the prosecutor decided that he would in due course to apply to the Khoroshevsky District Court of Moscow for an order for the respondent’s preventative detention in custody. Such an application appears not to have been proceeded with until the 3rd March, 2004, and no express explanation is furnished for this.

4.2 In the latter half of 2008, a formal request was received in this jurisdiction for the respondent’s extradition from Ireland to Russia.

4.3 That request, in addition to addressing the requirements of s. 25 of the Act of 1965 and article 12 of the European Convention on Extradition 1957, also contained a number of important representations and assurances. These were as follows:

“We guarantee that according to norms of international law, in Russia N.S.S. will enjoy all the resources for defence, including legal consulting; he will not be the subject to torture, cruel, inhuman or degrading treatment or punishment (Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, and likewise corresponding Conventions of the United Nations and the Council of Europe, and Protocols thereto).

Capital punishment is not provided for the crimes incriminated to N.S.S.

Prosecutor General’s Office of the Russian Federation guarantees that the request for extradition is not aimed at prosecution of the person for political reasons, or because of his race, religion, nationality, or political views.

The period of limitation for making N.S.S. criminally liable has not expired; he enjoys no immunity to criminal prosecution.

N.S.S. was not earlier convicted or acquitted with regard to the same crime.

The Prosecutor General’s Office of the Russian Federation guarantees that N.S.S. will be prosecuted only for the offence in relation to which his extradition is sought. After completion of the trial, and in case of pronouncement of conviction, after service of the sentence, he will be able to leave the territory of Russia.”

4.4 As indicated already, the request in this case was duly certified by the Minister in accordance with s.26(1)(a) of the Act of 1965, following which this Court issued a warrant for the respondent’s arrest under s. 26(1)(b) of the Act of 1965 on the 13th September, 2010.

4.5 The evidence establishes that in execution of that warrant the respondent was subsequently arrested by Sgt. J.K. a member of An Garda Síochána, in Galway on the 24th January, 2014. He was then brought before the High Court and was duly remanded from time to time, initially in custody, and later on bail, pending a s. 29 hearing in these proceedings, and he has duly appeared before the High Court and has answered his bail on all occasions on which he has been required to do so.

5. Points of Objection

5.1 The respondent objects to his proposed extradition on the following basis:

“1. That the documentation presented to the applicant for the purposes of certifying a request under section 26 of the 1965 Act is bad on its face.

2. That the requesting State, Russia, and the applicant separately are guilty of delay in seeking a warrant from this honourable Court between 1998 and 2014.

3. That the applicant’s extradition is being sought by the requesting state without charge for the purpose of further detaining him to further investigate the offence or offences for which he is accused.

4. That the applicant is at risk of having further unspecified charges put to him as the investigation is incomplete.

5. That the statutory time prescribed by the requesting state to prosecute the offence with which the applicant has been accused or any other offence pursuant to the requesting member state criminal code, has expired.
6. That the applicant is at peril of being detained for an indeterminate period of time in "preventative detention" while an investigation is ongoing and without charge, in breach of his constitutional and convention rights.
7. That any prospective charge or charges are not clear and ascertainable as the investigation is admittedly not complete.
8. That the requesting State has already to date unsuccessfully attempted to seek the extradition from Portugal, an EU Member State.
9. That the diplomatic assurances offered to the applicant by letters dated the 30th June, 2008, 22nd August, 2008, 20th April, 2009 and 25th March, 2010 are unreliable in their protection of the right to legal representation, due process , breach article 3 UNHCR protection and have variously in the past been rejected by the Court of Human Rights.
10. That if the respondent is to be returned to Russia, he will not enjoy the right to habeas corpus, thereby breaching article 40 of the Constitution and article 5 of the UNHCR.
11. The respondent will not enjoy the presumption of innocence, notwithstanding provision for same under the Russian Criminal Code.
12. The burden of proof, though attached to the prosecution in criminal matters under Russian law, will in substance and in practice be transferred to the respondent if he was to face trial in Russia.
13. That the Criminal process in the requesting State is biased in favour of the prosecution.
14. That the applicant will not receive a fair trial before an independent and impartial Judiciary.
15. That the applicant will not have access to independent legal advice and representation.
16. [Not being proceeded with.]
17. That the respondent, if acquitted following a trial in Russia, is exposed to a risk of re-arrest on separate offences for the purpose of further detention to satisfy a sentence that would have otherwise followed a conviction for murder.
18. That the respondent will be exposed to cruel, inhumane and degrading treatment owing to the prison conditions in Russia in breach of article 3 of the UNHCR.
19. [Not being proceeded with.]"

5.2 In addition, the respondent has indicated an intention, to which the applicant has raised no objection, to further seek to resist his extradition in reliance on a fundamental rights based objection based upon article 8 of the European Convention on Human Rights.

6. Correspondence and minimum gravity

6.1 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 Offences) Act 2001 (hereinafter the Act of 2001). Section 10 deals with extraditable offences and in that regard sets out the requirements that must be met as to correspondence and minimum gravity.

6.2 In so far as s. 10 is relevant to the present case the Court is mainly concerned with subss (1), (3) and (4). Subs.(2) is not relevant to the present case.

"**10.**—(1) Subject to subsection (2), extradition shall be granted only in respect of an offence which is punishable under the laws of the requesting country and of the State by imprisonment for a maximum period of at least one year or by a more severe penalty and for which, if there has been a conviction and sentence in the requesting country, imprisonment for a period of at least four months or a more severe penalty has been imposed."

"(3) In this section 'an offence punishable under the laws of the State' means—

(a) an act that, if committed in the State on the day on which the request for extradition is made, would constitute an offence, or

(b) in the case of an offence under the law of a requesting country consisting of the commission of one or more acts including any act committed in the State (in this paragraph referred to as 'the act concerned'), such one or more acts, being acts that, if committed in the State on the day on which the act concerned was committed or alleged to have been committed would constitute an offence,

and cognate words shall be construed accordingly.

(4) In this section 'an offence punishable under the laws of the requesting country' means an offence punishable under the laws of the requesting country on—

(a) the day on which the offence was committed or is alleged to have been committed, and

(b) the day on which the request for extradition is made,

and cognate words shall be construed accordingly.”

6.3 Counsel for the applicant has invited the Court to find correspondence with the offence in Irish law of murder contrary to common law, and as provided for in s. 4 of the Criminal Justice Act, 1964 (hereinafter the Act of 1964). The suggested correspondence was not challenged by counsel for the respondent who confirmed that he was raising no issue on correspondence. The Court, adopting the approach commended by the Supreme Court in *Attorney General v Dyer* [2004] 1 I.R. 40, and having considered the totality of the information placed before it by the applicant, and the provisions of s. 10(1) and (3) of the Act of 1965 as amended, is satisfied to find correspondence with the offence in Irish law of murder contrary to common law, and as provided for in s. 4 of the Act of 1964.

6.4 In so far as minimum gravity is concerned, there was again no controversy. The offence of murder charged under article 105(1) of the Criminal Code of the Russian Federation carries a potential penalty of imprisonment for up to fifteen years and the corresponding offence under Irish law, namely, murder contrary to common law, and as provided for under s. 4 of the Act of 1964, carries a potential penalty of imprisonment for life. In those circumstances it can be stated that the minimum gravity requirements of s. 10 of the Act of 1965 are comfortably met.

7. Evidence adduced on behalf of the respondent

7.1 The respondent's own evidence

7.1.1 In the first instance the respondent relies upon his own affidavit sworn in these proceedings on the 29th January, 2014, for the purposes of a bail applicant. The said affidavit contains his initial sworn account as to his personal circumstances.

7.1.2 The respondent avers therein that he is a Moldovan national and that he was born in, 1975, in Moldova. His birth certificate is exhibited. He says that he spent three years training as a nurse and received a diploma in 1994, and, again, the diploma is exhibited. He further states that he married another nurse named E.I. on the 21st October, 1995, and exhibits the marriage certificate.

7.1.3 The respondent avers that he and his wife divorced in Moldova in 2000 because he did not wish her to feel under any threat by being known as his wife. However, since E.I. came to Ireland in 2001 they have lived here as man and wife, together with their children.

7.1.4 The respondent has deposed that in 1998 he was sharing a flat, and was working, with a man in Moscow. This man was found dead in the street. The respondent says that he was suspected by the authorities in Moscow of being complicit in his death, but that he has always denied, and continues to deny, that he had any part in it. He says that he left Moscow and returned to Moldova where he was questioned by the Moldovan police about the death of this man, but was released. He subsequently emigrated to Portugal under his own name. The Russian authorities sought his extradition from Portugal on the basis that he was implicated in the man's death. However, he was not extradited from Portugal.

7.1.5 The respondent further deposed that he came to Ireland in 2001 under the name I.F. He was later joined by his wife. His wife is now a naturalised Irish citizen, as are his two children, D.S. aged 17 (as of the date of the said affidavit), and F.S., aged 11 (as of the date of the said affidavit). The respondent states that they have lived in, Galway since coming to Ireland. He has worked with a tiling contractor since coming to Ireland, and continues to do so.

7.1.6 The respondent has since provided a much fuller and more detailed account of his circumstances in a later affidavit sworn by him on the 24th March, 2014. In this later affidavit he makes the following averments (*inter alia*):

“3. In 1996, our son D.S.S. was born. After the birth of our son, we were under increasing financial pressure as the nursing wages in the hospital were very small and inadequate to meet the needs of our expanded family. My younger sister, A.S. , had started a small business selling fruit in Moscow so I decided to move to Russia in the hope of increasing the family income by working in my sister's business. In March of 1997, I moved into an apartment with my sister in Moscow and commenced working in her business. My wife continued to work in the hospital in Moldova looking after D.S. with the assistance of her parents.

4. During the first three months in Moscow things went relatively well with my sister's business, but after the summer business began to decline so I decided to seek work in the construction industry. During this period, my sister started a relationship with a man called I.P.B. I knew of Mr I.P.B. because he was a Moldovan national who grew up in a neighbouring village. Mr I.P.B. moved into the apartment with my sister and myself a few weeks after my arrival and we all got along very well. In or around July of 1997, I found work in a Russian construction company which was building on a site on the outskirts of Moscow city. This was some distance from the centre of city so I decided to rent an apartment with some co-workers proximate to the site which I was working on. Mr I.P.B. also worked for this company but not in the same area or location. The wages I was earning in this company were significantly more than the salary I was receiving as a nurse in Moldova and I was happy with the decision to move to Moscow at this stage.

5. I say that in April of 1998, the construction job on the outskirts of Moscow finished so I moved back to my sister's apartment as work was commencing on a new construction site in the centre of the city. At this stage, my sister's relationship with Mr I.P.B. was over and he was no longer living in her apartment. In or around June of 1998, the landlord terminated our tenancy and I found separate accommodation at another premises in another part of Moscow, on my own. In or around this time, my wife was becoming increasingly concerned about my long absence from home and was threatening to leave me if I did not return to Moldova imminently.

6. I say that a short time after this, around mid-July of 1998, I was contacted by Mr I.P.B. who informed me that he needed accommodation. As he appeared stuck, I offered him a place to stay at my apartment. I continued to work for the construction company but was also making plans to return to Moldova and to my wife and child. In or around the first weekend of August 1998, I recall Mr I.P.B. saying that he was going out to meet some friends in the afternoon. He did not return that evening and at the time I thought nothing of this as he said he was going out to a party that evening. He had only moved in a few days beforehand and had little or no belongings with him.

7. I say that on or about the 12th of August 1998, I returned to Moldova to be with my wife and child whom I had not seen for a considerable period of time. I remained unemployed after my return to Moldova. During this period, I assisted a friend who was involved in printing and publishing a newspaper. This paper expressed anti-communist sentiments. In or around October of that year, I was visited by a police officer from Cahul which is 200 kms north of Chisinau where I was residing. He informed me that he was investigating the theft of some books from a library and asked me to assist him by answering questions in the police station. I agreed to do so. When I entered the interview room I was surprised to find

that the police officer was also accompanied by a member of the Russian police force. During the course of the interview, the police officer never asked me about the theft of any books but kept asking me about my time in Russia and more specifically about my relationship with Mr I.P.B.. They never informed me what the interview was about or what had happened to Mr I.P.B.. I thought at the time that this interrogation was to do with my involvement in my friends newspaper. I answered all of their questions and signed the statement which had been read back to me. The content of the statement was along the lines of the history of my time in Russia as I have set out above. As I left the interview room, the Russian Police officer made an intimidatory remark.

8. During the course of the following months I was unable to find employment in Moldova so in or around December of 1998, I decided to travel to Israel as I had a prospect of work there but due to visa difficulties this opportunity fell through. In early January 1999, a friend of mine asked me would I like to join him in seeking work in Lisbon, Portugal. I agreed and travelled to Kiev by bus to obtain a 'Schengen Visa', which would permit me to work in that country. At the end of January 1999, I travelled by bus to Lisbon, Portugal with my friend. A week or so after my arrival, I got a job tiling in a Portuguese construction firm. This firm also provided me with training in that area and accommodation on a campus. I became proficient in tiling and other areas of flooring over the next number of months and in October of 1999, my wife came to Lisbon to live with me. Soon after her arrival, E.I. also managed to find work. We lived and worked happily in Portugal for one year and then at the end of September 2000, I received a phone call from a person looking to employ me to tile his house. I agreed to meet him at 8 o'clock in the morning at a certain location. When I arrived to meet this person, I was met by two Portuguese Police officers who arrested me. They showed me a picture of Mr I.P.B. and accused me of killing him. This is the first time I had been accused of this offence and indeed the first time I was informed by anyone that he had in fact been killed. I was detained in a cell in the Police station until the following day when I was taken to court.

9. I attended court the following day. I did not require an interpreter as I could understand Portuguese quite well at that stage. As I understand it, the application to have me deported was rejected by the court as the extradition papers, which had been translated from Russian to Portuguese, stated that Mr I.P.B. had been killed on the 2nd of August 1999. As I was residing in Portugal on that date, this obviously could not have been me. My Schengen Visa was presented to the court showing my entrance dates. It may have been suggested that this was a typographical error, I do not remember, but the application was rejected and my papers and passport were returned to me. When I returned to the campus I was dismissed from my job because my employer was aware of my arrest and the accusations made against me. We therefore also had to leave our accommodation on the campus. My wife was extremely upset and concerned. We decided that she would return to Moldova and that I would make my way to Ireland by truck. We knew the laws in Ireland were favourable to the granting of asylum in Ireland, especially if we had a child born in that jurisdiction (at that time).

10. E.I. took my passport, as we felt that if I was caught with this document I would be deported back to Moldova. I travelled hidden in a Lorry to Port de Calais in France. I had paid a person €300.00 to do this. I then boarded a cargo ship to England. From the UK I boarded a car ferry to Dublin Port. This was in or around October of 2000. Before I left Portugal, I had arranged to meet the father in law of a friend of mine in Dublin. His name was D.F. I stayed with him for a short period of time. He advised me how to apply for asylum, he also advised me not to use my own name. He said his brother's name was J.F. and that I could use that name. I then applied for asylum and moved to Dingle in County Kerry where I was provided with accommodation. Soon after this, I found work in a fish factory where I worked for a period of 11 months.

11. In October of 2001, my wife procured a false Estonian passport and flew to Ireland with our son. I met her in Dublin Airport and all three of us immediately applied for asylum, myself for a second time. I reapplied under the same name, J.F., but the authorities misread the j for an i and so my name changed to Ion Fabion which I am currently known as. We moved to County Galway where we were assigned accommodation and on the 12th of July 2002 our daughter F.S. was born. After this, I applied for residency but this process took a very long time. For a number of years I remained unemployed. I carried out some tiling and flooring work for people who required it but this work was sporadic and inconsistent. In 2004/05 my residency was finalised and I moved to Galway city where I started up a business with my wife. Over the years this business grew and expanded and presently employs 18 people.

12. I say that we have fully integrated into Irish society and have built a new life here for our family. My business continues to grow and I believe that we have contributed very positively and significantly to Irish society. For the last 11 years we have been renting accommodation in Galway. In January 2013, I purchased a site of land in Galway and am in the process of building a house for myself and my family.

13. I heard nothing more of the matter about Mr I.P.B. for many years until one day in 2010, I began to receive letters and phone calls from anonymous persons telling me that unless I paid them €30,000.00 they would report me to Interpol to have me extradited. I knew these people were from Moldova and suspected that they may be neighbours but I knew nothing more than that. In this regard I beg to refer to these letters upon which marked with the letters 'NS4' I have signed my name prior to the swearing hereof. I did not succumb to this blackmail and continued on with my daily life of bringing up my children and working in my business until I was arrested by the Irish authorities this year for the purpose of having me deported back to Russia. I have absolutely no knowledge of the circumstances or evidence which form the basis of the allegations made against me, only that I am accused of killing Mr I.P.B.. I absolutely deny the allegation of any wrong doing what so ever. It goes without saying that my recent arrest and detention and the threat of being sent back to Russia to face trial for an offence I did not commit, has utterly devastated my life and that of my family. My son D.S. is now 17 years old and F.S. is 11. They are fully integrated Irish citizens living happily in this country up to the point of my arrest. Their world and mine and my wife's has now been turned upside down. I say that while this matter is ongoing, my business is obviously suffering detrimentally as my wife and myself had significant control over the day to day operations of the company.

14. I say that I have gone from being very happy with my life in Ireland and being very optimistic about the future, to living in a state of perpetual fear and genuine dread about what the future holds for myself and my family. I say that even though I am a person of good character, never having been convicted of an offence in any jurisdiction nor spending any time in prison, I have a genuine and real fear about what would happen to me if I was extradited back to Russia."

7.2 Other evidence adduced by the respondent

7.2.1 The respondent also relies upon an affidavit of his solicitor, D.F., sworn on the 24th March, 2014, for the purpose of exhibiting a number of documents. The said documents include letters written by him to both the Moldovan and Portuguese embassies respectively

seeking information in support of the respondent's account. According to Mr D.F., no replies were received to these letters. In addition, Mr D.F. states that he commissioned an expert report from Professor William Bowring of Birbeck College, University of London and he exhibits that report dated 24th March, 2014. The Court will review Professor Bowring's said report under a separate heading. Mr Fahy also exhibits several extracts from a Report to the Parliamentary Assembly of the Council Of Europe by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (the Council of Europe Report), in respect of the Russian Federation, and dated the 14th September, 2012, (Document No 13018) dealing *inter alia* with the judiciary, corruption, and abuses by law enforcement agencies; an extract from the Report of Amnesty International 2013, on "The State of the World's Human Rights", referable to the Russian Federation; and several extracts from The U.S. State Department Human Rights Report on the Russian Federation 2013. The Court has read, considered, and taken due account of all of this material.

7.2.2 The extract from the Council of Europe Report makes clear that, as of the date of that report, there was a significant ongoing problem with judicial independence in circumstances where many judges have no security of tenure, and judges have little protection from undue influence by the State or private interests, and judges who displease powerful interests are potentially liable to be unfairly disciplined or even dismissed in an abusive disciplinary process. However, the commentary that follows with respect to the relationship between the judiciary and the Prosecutor General's Office is of even greater potential concern. The Council of Europe Report states (at paras. 338 to 348 inc):

"338. The Prosecutor General's Office (Prokuratura) is the least reformed institution of the judicial system in Russia. Upon accession to the Council of Europe, the Russian Federation undertook to "introduce new law(s) in line with Council of Europe standards ... on the role, functioning and administration of the Prosecutor's Office". Our predecessors, in 2002, while noting that some progress had been achieved, stated that they expected the Russian authorities to complete the reform of the Prosecutor General's Office in accordance with Council of Europe principles and commitments entered into. This question was also extensively tackled by our predecessors in the last note on Russia in 2007 and we invite all those interested to consult it. The conclusions in 2003 of the then rapporteurs was that, since 2002, the reform process had come to a halt and meaningful reform is needed.

339. The main concerns identified by all our predecessors were the excessive role played by the Prokuratura in criminal cases and its general oversight function.

340. With regard to the former, it was a matter of serious concern that, in criminal cases, courts seemed to be an extension of the Prosecutor General's Office. This was evidenced, *inter alia*, by the extremely low percentage of acquittals (less than 1%) and a substantial disparity in acquittal rates between cases involving juries (20%) and cases involving only judges (1%).

341. Judges who did not follow informal orders from the prosecutors allegedly faced disciplinary proceedings on different grounds. This may be illustrated by the case of Judge Kudeshkina, already mentioned above, who was disqualified as a judge in 2003 after she refused to rule as the Prokuratura had requested in the case of Mr P.Z. and publicly spoke out about the pressure put on her.

342. These excessive prerogatives of the Prokuratura were deemed incompatible with Articles 5 and 6 of the Convention, as well as with Recommendation Rec(2000)19 of the Committee of Ministers of the Council of Europe on the role of public prosecution in the criminal justice system and Recommendation 1604 (2003) of the Assembly on the role of the public prosecutor's office in a democratic society governed by the rule of law.

343. Moreover, the fact that the Prokuratura was at the same time responsible for the general supervision of all law enforcement agencies, for investigating crimes, protecting victims or citizens generally, for prosecuting offenders and for maintaining legality in all court procedures, was a cause for serious concern.

344. It is to be welcomed that the Russian authorities decided to address this concern and, in September 2007, introduced the Federal Law "on the Prosecutor", which amended the Code of Criminal Procedure and established a new body, the Investigative Committee, charged with the pre-trial investigation.

345. Initially, the Investigative Committee was a part of the Prokuratura and its Head was one of the Prosecutor's deputies. However, he was appointed according to the same procedure as the latter (by the Federal Council upon the proposal of the President) and was not placed under his responsibility. In January 2011, in a welcome revision of the Law, the Investigative Committee was separated from the Prokuratura and became an independent structure.

346. The aim of the reform was to separate pre-trial investigation and "legality oversight". The pre-trial investigation into serious and particularly serious crimes now falls within the exclusive jurisdiction of the investigators of the Investigative Committee. The "legality oversight" remains with the prosecutors. Other offences which do not fall under the exclusive jurisdiction of the Investigative Committee are still investigated by the Ministry of the Interior under the close supervision of prosecutors. The latter give binding instructions to the investigators.

347. The broad supervisory powers of the Prokuratura over the executive and legislative branches, operational investigative organs and administrative agencies are problematic. In general, the scope of instruments with which the Prosecutor's Office is entrusted (for example, the power to issue an order to appear before the Prosecutor-General to present explanations in relation to any matter which is the subject of the Prosecutor's supervision or investigation) is far too broad and it is not specified in what matters and in what proceedings such orders are binding.

348. The Russian authorities have informed us that two new draft laws "on the Prosecutor's Office of the Russian Federation" and "on the status of prosecutors in the Russian Federation" are being prepared. We hope that they will address the outstanding concerns outlined above."

8. Professor Bowring's Report

8.1 At the outset it requires to be stated that Professor Bowring sets out his credentials in Annex 1 to his report, and they are indeed impressive. No objection is taken with respect to his claim to be an expert in the government and politics of the Russian Federation, or an indeed with respect to human rights and minority rights issues in Russia. He is, *inter alia*, a member of the Bar of England and Wales, was in full time practice as a Barrister for many years, and is now a full-time academic and Professor of Law at the University of London, specialising in Russian affairs and in particular the administration of justice and the judicial system and penal system within

the Russian Federation. It is clear from his *curriculum vitae* that he has had extensive interactions with the Russian authorities for and on behalf of the UK government, as well as on behalf of numerous other reputable bodies such as the Council of Europe, the European Union, the O.S.C.E., and the U.S. State Department to name but some. In addition, he has given evidence on many occasions in extradition cases before Westminster Magistrates Court. The judges based at Westminster Magistrates Courts are specialists in extradition and they hear all outgoing extradition cases in England and Wales at first instance.

8.2 The applicant does, however, challenge the respondent's contention that Professor Bowring has expertise in Russian law, such as to allow his report, even if it were verified on affidavit, which it is, to be treated as equivalent to an affidavit of laws. The applicant contends that Professor Bowring has not provided any evidence that he is qualified as a lawyer in the Russian Federation. In so far as is known, he is not a member of the Bar in that jurisdiction, nor has he been admitted to practice in any capacity before any court in that jurisdiction. The applicant contends that in the circumstances he is not an expert in Russian law, he is not entitled to express an opinion on matters of Russian law and practice, and his report albeit verified on affidavit may not be treated as an affidavit of laws.

8.3 It is appropriate to rule on this issue at this point. The Court is satisfied that Professor Bowring has sufficient expertise on the basis of his studies and observed experiences to provide a description of structural and procedural features of the criminal justice system, the courts, the judiciary, and the penal system within the Russian Federation. However, the Court is not satisfied that he has the necessary expertise to interpret specific provisions of Russian law, should the meaning of those provisions be controversial and require to be interpreted.

8.4 Professor Bowring's report addresses two principal issues. The first is what he characterises as "Problems of the Judicial System and 'Legal Nihilism' in Russia". The second is "Conditions of Detention" in prisons and places of detention within the Russian Federation. The report runs to 91 paragraphs, and the Court has considered it in detail. It is proposed to quote in full the section dealing with the first issue (paras 6 – 25), and to summarise the somewhat lengthier section dealing with the second issue (26 – 83).

8.5 Under the heading "Problems of the Judicial System and 'Legal Nihilism' in Russia", Professor Bowring states:

"6. The Russian legal system belongs to the family of continental or "civil law" legal systems, with their origins in the Napoleonic Codes and Roman Law. Russia draws much inspiration from the German legal system, although it is also influenced by the Dutch, French, Swiss and other continental European systems. There are no legal precedents or binding cases, and each area of law has its Codes, for example the Civil and Criminal Codes, and corresponding Procedural Codes. Advocates and judges will bring to court academic commentaries on the relevant codes, and the only case-law cited will be the binding constitutional rulings and explanations of the Constitutional Court, the Guidance of the Supreme Court and Supreme Commercial Court, and, to a limited extent, the judgments of the European Court of Human Rights.

7. There have been several attempts since the collapse of the USSR to reform the legal and judicial systems. The fall of the USSR was preceded by publication of the *Conception of Judicial Reform* published on 24 October 1991, and the enactment on 22 November 1991 of the *Declaration of the Rights and Freedoms of the Person and Citizen* by the Supreme Soviet of the RSFSR. The Constitutional Court, created as the USSR reached its death-throes, started work in January 1992, followed on 26 June 1992 by enactment of the Law "On the Status of Judges of the Russian Federation", on 27 April 1993 by enactment of the Law "On Complaining to Court About Activities and Decisions which Violate the Rights and Freedoms of Citizens". On 16 July 1993, jury trial began with enactment of the new Part X to the Criminal Procedural Code (UPK), which introduced jury trial, as an experiment, in nine Russian regions.

8. In a second wave of reform, President Putin from 2000 to 2003 expressly referred to himself as following in the footsteps of the great reforming Tsar, Alexander II, and his law reforms of 1864. Putin too presided over the creation of a system of justices of the peace; installation of jury trial throughout Russia with the exception of Chechnya; enhanced judicial status; a much reduced role for the prosecutor in criminal and civil trials.

9. The reforms of 2001-2003 were driven through the Russian Parliament against strong opposition from the *Prokuratura* (Office of the General Prosecutor), and included the three new procedural codes enacted from 2001 to 2003, Criminal, Arbitrazh (Commercial), and Civil, as well as the radical improvements to Yeltsin's Criminal Code of 1996, 257 amendments in all, which were enacted on 8 December 2003. However, this second phase of legal and judicial reform from 2000 came to a definitive end in late 2003, simultaneously with the arrest of Mr Khodorkovsky and the destruction of YUKOS.

10. Russia has three judicial systems which have equal status under the 1993 Constitution, though this is about to undergo radical change.

11. First, there is the Supreme Court of the Russian Federation, at the head of the system of Courts of General Jurisdiction (CGJ). These courts hear criminal cases, and civil cases concerning disputes between natural persons, or between natural persons and legal persons or public bodies. Secondly, there is the system of Federal Arbitrazh Courts, with the Supreme Commercial Court at its head. These are commercial courts, created in 1992, hearing economic disputes between legal persons, that is, corporations. Thirdly, there is the Constitutional Court of the Russian Federation, deciding on the constitutionality of laws and other normative acts. A number of the Russian Federation's 83 regions also have Constitutional or Charter Courts.

12. Russia, like France and Germany, has a career judiciary with at least 30,000 full-time judges. The Arbitrazh system alone has 100 courts and 4000 judges. Very few advocates become judges, and most judges have either commenced a judicial career within a few years of graduating from law school, or are appointed from the ranks of the investigative and prosecution services. A serving judge will be very anxious not only to protect his or her position as a judge, but also to secure promotion within the system. I explain below how this works.

13. The Chairmen of the Constitutional Court, the Supreme Court, and the Supreme Commercial Court met regularly with President Putin, several times a year, and their discussions include not only question of budgetary provision for the judicial systems, but also state requirements as concern the work of the courts. This practice continued with former President Medvedev.

14. The Russian judicial system has now been plunged into a new period of turbulence.

15. On 6 February 2014 President Putin signed a law which brings about the merger of the Supreme Commercial (Arbitration) Court, which oversees business disputes, and the Supreme Court, which handles criminal cases and civil lawsuits. The merger will be completed by August 4 2014. The revamped Supreme Court will be located in a new building

in St. Petersburg, and will comprise 170 judges to be selected by a special exam. Mr Anton Ivanov, who has endeavoured to modernise the commercial court system will lose his position, a fate which has befallen many of Medvedev's circle since the re-election of Putin. A number of judges of the Supreme Commercial Court have already resigned. It is also strongly rumoured that Mr Medvedev could be appointed the Chairman of the new merged Supreme Court, giving him a "soft landing" following his likely removal from the post of Prime Minister.

16. Mr Medvedev has been an outspoken critic of the existing judicial system.

17. On 4 February 2010, at a meeting to which I will refer further below, former President Dmitry Medvedev said the following:

'... the investment climate in our country is directly dependent on the judicial system efficiency. Every time I meet with Russian entrepreneurs or foreign investors, they always say the same thing: if Russia is to have a first-class investment climate, the judicial system has to develop, mature and be able to effectively discharge its responsibilities.'

18. From the early days of his Presidency, Medvedev was highly critical of what he termed "legal nihilism" in Russia. On 10 September 2009 in his unprecedented article published on the Internet, entitled "Go Russia!", Medvedev described Russia as having "a primitive economy based on raw materials and endemic corruption." He promised "measures to strengthen the judiciary and fight corruption", but also declared that "An effective judicial system cannot be imported."

19. The need for reform was confirmed again in October 2009, with the publication of a report ordered by the Institute of Contemporary Development (ICD) - President Medvedev is the Chairman of its Board of Trustees - and prepared by the Centre for Political Technology. This report was entitled *The Judicial System of Russia. The Fundamentals of the Problem*. 'The Report was based on qualitative sociological research carried out in 2009, by means of expert interviews in several regions of Russia with judges and retired judges, advocates, academic lawyers, business people and NGOs.

20. The report concluded that the main problem of the Russian judiciary is not corruption, which does not exceed the level of corruption in Russia as a whole, but the high level of dependence of judges on government officials. The research showed that the large number of cases which do not concern the interests of government bodies are decided objectively. But in the most significant cases judges protect the interests of the officials and not those who are actually in the right. A case decided in accordance with the law, but not in the interests of officials, will be overturned on appeal and returned for further consideration. And the more frequently judgments are overturned, the more grounds there will be for dismissing a judge who has simply decided according to law. Judges bear these unwritten rules in mind, and make their own conclusions as to which cases to decide according to law and which not.

21. The research revealed all the levers by means of which the dependence of judges is maintained within the system itself. The most important factor in the work of judges, the report says, is fear and dependence on the chairman of the court. The chairman of every court has powerful levers for putting pressure on judges. The chairman decides on the distribution of cases to particular judges, awards bonuses, and resolves the judges' housing problems. The promotion of a judge is decided by the chairman, and the chairman may take disciplinary-proceedings against a judge right through to the judge's dismissal. At the same time, the chairman of any court in Russia is appointed and re-appointed by the President of the Russian Federation, which ensures the chairman's dependence on the authorities. Thus, a rank and file judge when taking a decision must keep an eye on the court chairman, and the chairman in turn must correctly interpret signals from the Kremlin, the local administration, influential government officials, politicians and businessmen.

22. Thanks to the actions of these levers, government officials have at their disposal a directed court, which can be used in part as a disciplinary mechanism (the experts came to the conclusion that the court is a repressive organ) and as an instrument for advancing the interests of particular economic groups. The level of pressure on the court depends on its level, and the higher the court the less is the pressure, the report says. The Constitutional Court has been the most independent, and the lower the court the greater the number of sources of pressure.

23. The report also contains statistical data showing that the rate of acquittal in non-jury cases is less than 1%. The judges themselves recognise that acquittals are reversed on appeal 30 times more often than convictions. This is why convictions predominate, and there is a fear of acquitting. The authors of the research conclude that the present position of judiciary may be improved by attracting competent professionals to the ranks of the judges, but it will not be possible to retain them. They also consider that the number of complaints to the European Court of Human Rights will continue to grow. They add that the contemporary Russian judicial system, as in the Soviet times, cannot lead to independent justice. This does not mean that every judicial decision is dictated by someone or other. It means that any decision in any case may be dictated.

24. The research showed that the Russian judicial system is not a freestanding, independent branch of power in the system of the state. I return to this question in the next section.

25. Former President Medvedev on many occasions decried the "legal nihilism" and corruption which are so endemic in Russia, but his instructions were for the most part blatantly ignored. There were some attempts at legislative reform."

8.6 The second section of Professor Bowring's report is entitled "Conditions of Detention" and it draws heavily on the reports of various human rights reporting bodies. He points out that Russia is now in the fifth cycle of Reporting to the UN Committee against Torture under the UN Convention against Torture, which Russia ratified in 1987. Russia submitted its State Party Report in 2011. In October 2012, a Shadow Report was submitted to the Committee, the "Joint Report on the Observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Russian Federation for the period from 2001 to 2005", which was prepared jointly by leading Russian NGOs. A Resume of the latter Report quoted on the UN High Commissioner for Human Rights website notes (at para 9 thereof):

"... human rights organizations indicate cases of torture and ill-treatment occurring within the prison system and are noting an increase in complaints in recent years. A systemic problem is the torture in remand prisons (SIZO) which is primarily due to the active work in prisons of detective officers representing the interests of the investigation. This practice is occurring in all regions of Russia. Effective mechanisms for checking and investigation of torture and ill-treatment complaints are not readily available."

8.7 Professor Bowring quotes at length from the United States State Department Country Report on Human Rights Practices in Russia

in 2013. Amongst the passages quoted are the following:

"Conditions in prisons and detention centers varied but were sometimes harsh and life threatening. Limited access to health care, food shortages, abuse by guards and inmates, inadequate sanitation, and overcrowding were common in prisons, penal colonies, and other detention facilities."

"Health, nutrition, ventilation, and sanitation standards were generally poor but varied among facilities. Access to potable water sometimes was rationed. The federal minimum standard of space per person in detention is 43 square feet, and facilities generally met the standard."

In January 2012 the ECHR issued a pilot judgment in the case of *Ananyev v. Russia*, which found that prison conditions in the country violated the European Convention on Human Rights' prohibition against inhuman and degrading treatment. The ECHR uses pilot judgments as a means of dealing with large groups of identical cases that derive from the same underlying problem. In its judgment the ECHR noted that inadequate conditions of detention were a recurrent and systemic problem in the country. Applying pilot judgment procedures, the court held that the country had to improve conditions for pretrial detention by implementing a series of specific measures, which it detailed in the judgment. To that end the court ordered Russian authorities to draft a binding implementation plan. In October 2012 the government submitted an action plan for implementing the court's decision, establishing a working group and laying out a proposed series of draft laws and plans for construction of dozens of new detention centers. At year's end, however, the working group had not submitted the proposed draft laws on detention and there were no significant updates on the group's progress.

Access to quality medical care remained a significant problem in the penal system. Inmates often experienced delays in medical care due to bureaucratic procedures, and medicine was limited."

"Reports continued of prison staff abusing prisoners"

"Abuse of prisoners by other prisoners also continued to be a problem. There were elaborate inmate-enforced caste systems in which certain groups, including informers, gay inmates, rapists, prison rape victims, and child molesters, were considered "untouchables" (the lowest caste). Prison authorities provided little or no protection to these groups."

"Independent Monitoring: There were no prison ombudsmen. Prisoners could file complaints with public oversight commissions (POCs) or with the Human Rights Ombudsman's Office, but inmates were often afraid of reprisal, leading to self-censorship. Complaints that reached the POCs often focused on minor personal requests. Prison reform activists reported that only prisoners who believed they had no other option risked the consequences of filing a complaint"

8.8 Professor Bowring also refers to the Council of Europe's Committee for the Prevention of Torture (CPT) Report 2013, based on its visit in 2012 to SIZO "Kresty" in St Petersburg, SIZO No 1 in Ufa, and Colony No 1 in Yagul. This Report noted an on-going problem with intimidation of, and reprisals towards, prisoners who were interviewed by the CPT visitors. In addition, the Report stated (at para 9):

"... the 2012 visit revealed that long-standing recommendations at the core of the Committee's mandate - the prevention of torture and other forms of deliberate ill-treatment- remain to be implemented. This is particularly the case of the ill-treatment of persons detained by the police and other law enforcement agencies and legal safeguards against ill-treatment by law enforcement officials. Further, the ill-treatment of inmates serving sentences and the detention regime of remand prisoners continue to be areas of serious concern."

8.9 Professor Bowring also refers extensively to a number of judgments of the European Court of Human Rights (E.Ct.H.R), and of the English Courts, involving conditions of detention in the Russia Federation. These included *Kalashnikov v Russia* (Applic No 47095/99, 15th July, 2002); *Zorig Batayav v SSHD* [2003] EWCA Civ 1489; *ZB (Russian prison conditions) Russian Federation CG* [2004] UKIAT 00239; *RF v Tamarevichute* [2008] EWCA 534 (Admin); *Mamedova v Russia* (Applic No 7065/05, 1 June 2006); *Ananyev & Ors v Russia* (Applic Nos 42525/07 & 60800/08, 10 January 2012); *Russian Federation v Trefilov* (unreported, WMC, Evans DJ., 16 November 2012); *Russian Federation v Tyurin* (unreported, WMC, Evans DJ., 04 March 2013); *Russian Federation v Fotinova* (unreported, WMC, Riddle DJ., 21 March 2013)

8.10 Professor Bowring notes that in consequence of the pilot judgment of the E.Ct.H.R. in *Ananyev & Ors v Russia*, and the subsequent refusal, on article 3 grounds, of Westminster Magistrates Court (in a succession of cases - *Trefilov*, *Tyurin*, *Fotinova*, among others) to extradite persons to the Russian Federation, unless there was evidence of an improvement of conditions, or specific undertakings concerning the conditions in which an individual prisoner would be held, the penitentiary authorities in the Russian Federation responded by submitting an Action Plan to the Committee of (Foreign) Ministers of the Council of Europe. While this Action Plan promised significant reforms, concerns still exist regarding progress in its execution. The Russian Federation has published a number of reports on the execution of its action plan. In that regard, Professor Bowring has stated:

"75. On 26 March 2013 the Ministry of Justice of the Russian Federation published on its web-site an account of what had been done or decided so far in accordance with the action plan.

76. On 14 August 2013 the Russian Federation provided a further report on execution of its action plan. It reported that on 26 March 2013 the Russian President had introduced in parliament a draft Code of Administrative Procedure, with a view to improving judicial remedies. Furthermore, amendments were being prepared to the Federal Law No. 105-FZ of 15 July 1995 *On Detention of Suspects and Accused of Having Committed Crimes, and the Penitentiary Code of the Russian Federation*, so as to provide a new regime for obtaining compensation for inadequate conditions of detention.

77. On 25 September 2013 it was reported on the web-site of FSIN that Alina Shapar, a senior member of the staff of the Ombudsman for Human Rights of the RF, Mr Lukin, who visited SIZO No.1, 'Matrosskiy Tishini' in Moscow, had visited a number of cells, and had asked specifically about work to meet the requirements of the Pilot Judgment and Action Plan, in particular the closing off of the open toilets in the cells. The PA to the Governor, Anastasia Chzhu, responded that such work was being carried out in all Moscow SIZOs, in addition to improvements to medical facilities.

78. On 7 October 2013 the Russian NGO *Public Verdict* provided information to the Committee of Ministers 'in order to provide independent evaluation of the measures proposed by the Respondent State...'. This focused on Russia's proposals for a compensatory legal remedy, which appeared to be satisfactory provided implementation was adequate; and a preventive legal remedy which required clarification and correction as shown by the Foundation in detail. Additional

measures were required to enable detainees to bring their grievances to the court.

79. The Foundation called on the Committee of Ministers to invite Russia to provide a final version of its concept of reform; and to provide additional detailed information on a number of matters.

80. As at 1 December 2013 the total prison population according to FSIN was 680,200 people, a fall of 21,700 since the start of the year, although the SIZO population of 114,500 showed an increase of 847 over the same period. In the absence of a serious building programme, this bodes ill for the central problem of overcrowding.

81. I have been informed that on 18 December 2013 the extradition request in another Russian case was discharged by Westminster Magistrates' Court, on the basis that extradition to Russia would violate his rights under Article 3, because the dire prison conditions in Russia amount to degrading and inhuman treatment. The prosecution conceded that they were unable to provide evidence that Russian prison conditions comply with Article 3, and as a result no full hearing of the issues in the case was required to secure Mr Chizhov's discharge. There was no need for a judgment. This was the result of the effective reversal of the burden of proof following *RF v Fotinova*.

82. The onus is now on the Russian Federation to show that there have been real improvements, or that they can give satisfactory assurances.

83. The evidence so far in 2013 and 2014 does not indicate the necessary changes and improvements."

9. Additional evidence adduced on behalf of the applicant.

9.1 On the 18th July, 2014, the Prosecutor General's Office of the Russian Federation, having been informed of the objections raised by the respondent to his extradition, and the evidence relied upon in support of those objections, furnished by letter the following additional information in support of Russia's request for the extradition of the respondent:

"1. The evidence on oath given by N.S.S. in the High Court that he left Moscow for Moldova in August 1998 in order to be with his family, and that he only learned that his friend I.P.B. had been murdered at the end of September 2000 when being detained in Portugal, is not true and is disproved by the evidence obtained by the investigation about N.S.S.'s involvement in the murder.

On 02.08.1998 at 18:35 an unknown man who had been found on the bank of the Moskva river died of stab wounds in Moscow hospital No. 52. Later he was identified as Mr. I.P.B. On 04.08.1998 a criminal case was initiated on this fact, and a number of witnesses who were close to the victim were questioned, including Mr. N.S.S.'s sister - Ms. A.S.S., who testified that when she was going to the airport with her brother N.S.S. in August 1998 he confessed to her that he had killed Ivan, so he had to "hide out" somewhere abroad for about 10 years because the police officers would be searching him (a copy of the interrogation of Ms. A.S.S. along with the English translation is enclosed).

When it was found that Mr. N.S.S. was involved in the murder of I.P. B., a Resolution was issued in respect of N.S.S. on his arraignment as an accused on 25.01.1999, a measure of restriction in the form of detention was ordered for him and he was placed on the wanted list. The investigative authorities do not have information on the movements of Mr. N.S.S. in the territory of foreign states, including Moldova. However, in 2005 during the investigative activities the information was received from the competent authorities of Moldova that Mr. N.S.S. had left for Ireland together with his family where he applied for asylum under the name of the citizen of Republic of Moldova I.F. Meanwhile I.F. date of birth 18.03.1975, who is residing in the Republic of Moldova, did not leave his place of residence and did not travel outside the Republic.

2. Mr. N.S.S. who was wanted thorough (*sic*) the Interpol channels was detained in Lisbon by the law enforcement authorities of Portugal on 28 September 2000. The following day he was released from detention by the court order on condition of being supervised by the police, and the Russian authorities were notified that a formal request for his extradition was required from them urgently. On 20.11.2000 the Prosecutor General's Office of the Russian Federation sent a request to the Prosecutor General of the Portuguese Republic for the extradition of Mr. N.S.S. to Russia with the view of his criminal prosecution, along with the accompanying materials translated into Portuguese. When the Portuguese authorities received the above documents the location of N.S.S. was still unknown, because he had absconded from the Portuguese competent authorities. The search of the subject was continued.

3. The criminal case against N.S.S. is currently suspended due to his international search. If he is extradited to Russia the criminal investigation will be resumed, and after all the necessary investigative actions have been completed, including those with participation of N.S.S., and given the indictment has been approved by the prosecutor, the criminal case will be referred to the court for examination on its merits within reasonable time limits stipulated by the current legislation of the Russian Federation.

4. In compliance with the Plan of Actions on implementation of the requirements of the pilot judgment of the European Court of Human Rights in *Ananyev and others v. Russia* the Russian Federation took a number of measures to improve the situation concerning the observance of constitutional rights and legitimate interests of detainees.

The Federal Target Program "The Development of the Penal Enforcement System (2007-2016 years)" approved by Decree of the Government of the Russian Federation No. 540 of 05.09.2006 provides for construction of more than 20 new pre-trial detention facilities. As part of its implementation more than 10 thousand places for keeping detainees, and more than 12 penitentiary buildings and 17 utility household buildings were additionally put operation within 2009 - 1st half of 2014. Refurbishment was carried out in the existing detention facilities. On the whole sanitary space per prisoner as of 01.06.2014 averaged 4.4 sqm, whereas the norm prescribed by the law is 4 sqm. Currently, all the prisoners are provided with an individual sleeping place, bedclothes and tableware, personal hygiene products, three hot meals a day according to the norms established by the Government of the Russian Federation. The wards of SIZO (pretrial detention facility) and PFRSI (facility functioning as investigatory isolation ward) are equipped with toilet facilities ensuring adequate privacy, day and night lighting, tables for eating and benches, as well as the wireless speakers broadcasting national programs. About 40% of the total number of prison cells have television sets, refrigerators and ventilation equipment. The suspects and the accused are entitled to: personal security; meetings with a defense lawyer, relatives and other persons; they have right to file propositions, statements and complaints; to carry on a correspondence; proper material-personal

services and medical treatment; daily walk for at least one hour and other rights provided by the current legislation.

It is noteworthy that claims and complaints addressed to the prosecutor, to the court or other public authorities conducting supervision over the places of detention of the suspects and accused, to the Human Rights Commissioner in the Russian Federation, to the Human Rights Commissioner in the constituencies of the Russian Federation, to the European Court of Human Rights shall not be subject to censorship, and no later than the day following the day of filing a claim or complaint shall be sent to the addressee in a sealed parcel.

Every year the institutions and bodies of the penal enforcement system of the Russian Federation are visited by representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, who reported that the prison conditions of suspects, accused and convicted have improved. Recently, the representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited the detention facilities and correctional colonies in the Chechen Republic, the Republic of Dagestan, North Ossetia-Alania, Tatarstan, Bashkortostan and Udmurtia, in Moscow, Leningrad, Vladimir Regions, in the cities of Moscow, St. Petersburg, noting the improvement of prison conditions of detainees.

5. Currently, in order to improve the judicial system in the Russian Federation, the latter was reformed by combining two existing court instances: the Supreme Arbitration Court and the Supreme Court of the Russian Federation. The independence of judges and their abidance only by the Constitution of the Russian Federation and the national law is prescribed by Article 120 of the RF Constitution and is guaranteed by Article 9 of the Law of the Russian Federation On the Status of Judges in the Russian Federation of 26.06.1992. Examinations of criminal matters in Russia are carried out both by a panel of judges and by a single judge, depending on the jurisdiction of a criminal case. In accordance with Art. 31 of the Criminal Code of the Russian Federation, criminal cases related to the offenses specified by Art. 105 (1) of the Criminal Code of the Russian Federation, are subject to jurisdiction of the district court and are adjudicated by a single judge. Therefore, the examination of the criminal case against N.S.S. by a judge and a panel of twelve jurors is not provided by the current Russian law.

The Prosecutor General's Office of the Russian Federation in its request for the extradition of N.S.S. of 30.06.2008 gave the appropriate guarantees, namely: that he will be granted all possibilities for defence, including the assistance of defense lawyers, he will not be subjected to torture, or inhuman, or degrading treatment or punishment; he will be prosecuted only for the offences for which his extradition is sought, and he will be free to leave the Russian territory after criminal prosecution or trial, or - if he is convicted - after having served the sentence.

Furthermore, if N.S.S. is extradited he will be kept during his criminal prosecution in correctional facilities which comply with the standards set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms of 04.11.1950 and the European Prison Rules of 11.01.2006, and the consular officers of the Embassy of Ireland in Moscow will be able to visit him at any time.

6. A set of documents of the criminal case accompanying the extradition request along with the English translation were sent to the competent authorities of Ireland. In the text of the English translation it was said that the death of the victim occurred at 18:35 on 2 April 1998, whereas the attack on him happened on 2 August 1998. The wrong month was mistakenly put by the translator while translating the text which is disproved by the respective document in Russian, where the correct date is indicated - 02 August 1998."

9.2 A five page handwritten and signed narrative statement, with an addendum or postscript containing questions and answers, dated 26th December, 1998, purportedly taken by a Russian lieutenant of Militia A.I. Gorshkov from the respondent's sister, was appended to the letter of additional information, accompanied by a typed English translation. The narrative portion of the document describes the relationship between the respondent's sister and the victim of the murder, between the respondent and the said victim and the circumstances in which the respondent came to leave Moscow in haste shortly after the victim was killed. In particular, it contains the following passage:

"... at the end of August or at the beginning of September 1998, [my brother] called me and said that he had problems and had to leave urgently. After that, on the same day, I came to the station, met him, we took the bus and went for a ride. In the bus I started to ask him what had happened. He said that something had happened to I.P.B.. I asked, "What?" He said, "I killed him". I asked, "Why?" He replied, "Sooner or later it should have happened." The discussion on the bus was on the Moldovan language. He also said that, a friend of I.P.B's, came to his work and asked what had happened to him. My brother said that the friend was looking for him to sort something out with him. By bus we drove to the Shchukenskiy market, where I said Ruslan that I would go to see N.S.S off. K.R. escorted us to the tram stop. We, took the tram and went to the central air terminal to buy tickets to Chi'inau. On our way I asked my brother, why he was leaving. He replied that he would be searched by police officers for the murder, and he needed to stay somewhere abroad for some nine years. I asked him, where exactly. And he replied to it, that he did not know. He was in a very excited state and was afraid of everything. After that he kept silence almost all the way and did not say anything till the time of his flight. After he had left, I told K.R. and Sveta what had happened."

9.3 The addendum or postscript then contains the following series of questions and answers:

"Question: Was your brother jealous of I.P.B?

Answer: In principle, my brother was against my communication with I.P.B. Though Ivan had money, N.S.S. did not like Ivan's family, because his mother was a drinker.

Question: How do you think -- did N.S.S. kill I.P.B. out of jealousy?

Answer: I think that N.S.S. killed I.P.B because of the money and because Ivan expressed distrust to my brother: he borrowed him \$1000 US dollars this summer to buy a flat by N.S.S., but, in a few days, he took them back. This significantly damaged the plans of my brother to buy a flat.

Question: Why did you not say anyone before of what had happened -- that your brother killed I.P.B.?

Answer: When I asked N.S.S. about what had happened (about the murder), N.S.S. said that I should not say anyone about it, otherwise he would kill me.

Question: What did N.S.S. tell you about the murder of I.P.B.?

Answer: He said that he killed I.P.B. on the River."

10. Further evidence adduced by the respondent

10.1 In response to the additional information dated the 18th July, 2014, the respondent has submitted to the Court a notarised copy of a second statement made to the Russian police by his sister A.S.S. accompanied by a translation, which states:

"I, A.S.S., born in 1979, was interrogated by Lieutenant A. I. Gorshkov in December, 1998. I was summoned to the police station located at: Moscow, Svobody St. 15, where the interrogation in regards to my brother - N.S.S. - and our mutual acquaintance - I.P.B. - was conducted. At the police station I was taken to the office, where I was questioned about where I had lived when I had come to Moscow and how I was earning my living. I said everything about how I had come to Moscow in 1996, where I had worked and with whom I had lived. The police officers began to ask me questions about I.B.P., about when I had seen him and how I knew him. I said everything about when I had seen him and how I knew him. They started telling me that my brother and I were thought to have killed I.B.P. and that I just did not want to admit to it. I told them about what I had been doing on the day about which they asked me, and there were pictures as well. At first two people interrogated me, and I said everything I knew about my brother N.S.S. and my acquaintance I.P.B. They interrogated me for 3-4 hours. At first, they kept telling me that I had killed I.P.B., then started saying that my brother had killed him, and then they started saying that my partner K.R. and I had killed him. My interrogators started to threaten me and tell me that either I or my brother or K.R. would be put in prison anyways. They told me to confess or say who had killed I.P.B., and I told them everything I knew. Then my interrogators told me that if I did not want to admit to it the easy way, I would do it the hard way. After that, two officers stepped out and sometime later, two other officers came in and started asking me same questions. I sat on the chair, three officers sat in front of me, then one of them got up, picked up the chair he had sat on and started hitting me with that chair on my head and on my back. It was very painful and I begged them to let me go and stop beating me up, to which they replied that I had to write everything down as required or they would continue the beating. I said that I am not going to write everything as required, I would write everything how it had happened, after which the other officer who sat in front of me got up and came up to me. He had a plastic bag in his hand, and he put that plastic bag over my head. I started suffocating and almost lost my consciousness, but one of them said that it was enough, and they took the bag off my head. I felt very bad; the interrogation continued all night long, I could not take it any longer, and in the morning, I wrote in my statement that when my brother N.S.S. had been leaving for home and I had been seeing him off, he told me about the murder. However, the truth is that he never told me anything like that. After I had written my statement, all the officers threatened me and told me that if I complained about it to anybody, they would put my partner and me in prison, too. I know for sure that my brother N.S.S. has not killed anyone.

Therefore, everything I wrote in my interrogation statement in December 1998 is a lie, and I do not support my testimony.

I ask you to accept my statement and investigate this case."

11. Further additional evidence adduced on behalf of the applicant.

11.1 On the 9th October, 2014, the Prosecutor General's Office of the Russian Federation, furnished by letter yet further additional information in support of Russia's request for the extradition of the respondent, ostensibly engaging, *inter alia*, with the assertions made by the respondent's sister in her second statement to the Russian police. The said additional information states:

"In connection with the request on the criminal case No.215668 against N.S.S. under Part 4 of Article 111 of the Criminal Code of the Russian Federation, received from the competent authorities of Ireland, the following is reported.

1. During the preliminary investigation on this criminal case no statements of witness A.S.S. on the application of force to her and other inadmissible investigation techniques on the part of the police officers have not been received.

Before interrogation of A.S.S. as a witness on January 15, 2000 Article 51 of the Constitution of the Russian Federation, according to which she has a right not to incriminate herself and her close relatives, which under the Russian legislation include brothers, was explained to her. However, A.S.S. didn't use the provided right and didn't refuse to testify. In addition, during the interrogation A.S.S. didn't make an application for the presence of an attorney.

In addition, the content of Article 308 of the Criminal Code of the Russian Federation on criminal liability for perjury was explained to A.S.S.

According to the materials of the criminal case, the interrogation of A.S.S. has been conducted by the investigator from 09 a.m. to 12.45 p.m.; no other persons were present upon the interrogation.

At the end of the interrogation A.S.S. was familiarized with the interrogation record, whereof there is a corresponding mark.

In addition, no statements of wrongful acts by police officers have been received or considered by the investigate authority hereafter. No decisions in relation to the officials of the internal affairs bodies have been taken.

2. Nowadays, in order to improve the judicial system of the Russian Federation, the latter has been reformed by combining two existing judicial instances: the Supreme Arbitration Court and the Supreme Court of the Russian Federation. Independence of judges and their subordination only to the Constitution of the Russian Federation, Federal Law is regulated by Article 120 of the Constitution of the Russian Federation and is guaranteed by Article 9 of the Law of the Russian Federation dd. June 26, 1992 "On the Status of Judges in the Russian Federation". Criminal trials in Russia are carried out jointly by the court, as well as by a single judge, depending on the criminal jurisdiction.

Federal Target Program "Development of the correctional system (2007-2016)", approved by the Regulation of the Government of the Russian Federation No.540 dd. September 05. 2006 provides for the construction of more than 20 new pretrial detention facilities. As part of its implementation more than 10 thousand places for accommodation of arrested

persons, more than 12 secure buildings and 17 municipal facilities have been additionally put into operation within the period from 2009 till the first half of 2014. Repair works have been conducted on the existing areas in some pre-trial detention facilities. In general, as of June 01, 2014 the average sanitary space per one person held under guard was 4.4 sq.m upon a statutory rate of 4 sq. m per person. Currently, all the arrested persons are provided with a personal sleeping accommodation, bedding, eating utensils, personal hygiene products, three hot meals, according to the norms established by the Government of the Russian Federation. Wards of the pre-trial detention facilities and units functioning as pre-trial detention facilities are equipped with toilet facilities complying with the necessary privacy, day and night lighting, tables for eating and benches, as well as radios for broadcasting of the national program. The following rights of suspects are exercised: to personal security; to meetings with a defender, relatives and other persons; to appeal with proposals, statements and complaints; to correspondence; to the corresponding material and household and health service support; to use daily walk in the open air for at least one hour and the other rights established by current legislation.

3. After the criminal case initiation N.S.S., was not detained as a suspect of the commission of the incriminated offense and was not received into a pre-trial detention or a temporary detention facility. A preventive measure against N.S.S. was elected on January 25, 1999 by Khoroshevsky Interdistrict Prosecutor of Moscow in absentia.

Thereafter, due to changes in the existing criminal procedure legislation of the Russian Federation, the preventive measure in the form of confinement of N.S.S. was elected by Khoroshevsky District Court of Moscow on February 26, 2004 (in absentia).

According to Article 109 of the Criminal Procedure Code, the period of detention of N.S.S. may not exceed two months from the date of actual transfer of that person to the competent authorities of the Russian Federation. Further detention of N.S.S. is possible only according to a court decision. Maximum period of detention of N.S.S. during the preliminary investigation of the criminal case considering the gravity of his offense in accordance with the Russian legislation may not exceed 18 months.

4. In case of the extradition of N.S.S., to the competent authorities of the Russian Federation, he will be placed in the Federal Government Institution pre-trial detention facility No.4 of the department of the Federal Penitentiary Service of the Russian Federation in and for Moscow City.

A new block with a limit of 1200 persons has been functioning in the Federal Government Institution pre-trial detention facility No.4 of the department of the Federal Penitentiary Service of the Russian Federation in and for Moscow City since December 2008. The total area of the block is 6000 square meters, 5 sq.m accounts for a detainee. The wards are designed for accommodating from 3 to 8 detainees, and are fully equipped in accordance with the international standards. In addition, the facility is equipped with shower rooms, offices for reception by medical staff, psychologists, representatives of the administration, rooms for religious ceremonies, open air areas.

In order to ensure the personal safety of prisoners and to control their behaviour, the wards of the 8th block are equipped with CCTV.

5. When passing of a sentence regarding N.S.S. the court also determines the type of the penal institution and prison regime of the convicted person in addition to the type of punishment in accordance with Article 299 of the Criminal Procedure Code of the Russian Federation.

A penitentiary facility, in which N.S.S. will directly serve the sentence, is determined by the Federal Penitentiary Service of the Russian Federation after the judgment comes into force, subject to the standards set out in the Convention for the Protection of Human Rights and Fundamental Freedoms dd. April 11.1950.

At the same time I hereby inform you that the competent authorities of the Russian Federation guarantee the opportunity to visit N.S.S. by the employees of the Consular Service of the Embassy of Ireland in Russia in the place of sentence serving."

12. Professor Bowring's Second Report

12.1 The respondent has also adduced a second report of Professor B.B, dated 6th October, 2014, that seeks to engage with and address certain assertions contained in the additional information dated the 18th July, 2014.; together with the Report to the Russian Government on the visit to the Russian Federation carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment from 21 May to 4 June 2012, published on 17 December 2013, (the 2013 CPT Report), and the Response of the Russian Federation to that report also published on 17 December 2013 (the Russian response to the 2013 CPT Report).

12.2 In his report dated 6th October, 2014, Professor Bowring insists that comments within the additional information of the 18th July, 2014, referring to recent visits of the CPT "*noting the improvement of prison conditions to detainees*" must be viewed in their full context. He points out that "[I]n paras. 6 and 7 the CPT reported on uneven co-operation by the Russian police, and of refusal to accept that the CPT in fact had the powers granted to it; and also noted that in penitentiary institutions there were reports of intimidation". While acknowledging that some improvements were noted, Professor Bowring draws attention to the fact that the CPT stated (at para 9):

"However, the 2012 visit revealed that long-standing recommendations at the core of the Committee's mandate - the prevention of torture and other forms of deliberate ill-treatment- remain to be implemented. This is particularly the case of the ill-treatment of persons detained by the police and other law enforcement agencies and legal safeguards against ill-treatment by law enforcement officials. Further, the ill-treatment of inmates serving sentences and the detention regime of remand prisoners continue to be areas of serious concern"

12.3 Professor Bowring notes that although the CPT visited again from the 9th to the 19th July, 2013, and a delegation of the CPT participated in a round table with the Russian authorities in Moscow on 24th September, 2014, no reports have yet been published following these events. Accordingly the requesting state's reference to recent visits of the CPT "*noting the improvement of prison conditions to detainees*" can only refer to the 2013 CPT report.

12.4 Professor Bowring also takes issue with the assertion that a number of measures have been taken to comply with the pilot judgment in *Ananyev v Russia* (10th January, 2012), and the reference in that regard to the Federal Target Programme 2007-2016

approved by Decree No.540 of 5th September, 2006. He comments: "It should be obvious that a Programme approved in 2006 cannot be a measure taken to comply with the judgment of 2012" He also points to the fact that the E.Ct.H.R. referred to that Programme in para. 54 of its judgment in *Ananyev*, and later in the judgment stated the following (which, he contends, wholly contradicts a number of the assertions made in the additional information of 18th July, 2014):

188. The Russian authorities did not deny the existence of a structural problem related to overcrowding in pre-trial detention facilities. Its magnitude and urgency were acknowledged both in the Government's submissions in the present case and in the documents and position papers adopted at national level, such as for instance the Federal Programme for Development of the Penitentiary of 5 September 2006 (cited in paragraph 54 above). The Programme expressly referred to Russia's accession commitments and the standards for pre-trial detention set by the Court and the Committee for the Prevention of Torture and declared as its objective the alignment of the conditions of detention with the Russian legal norms and further transition to international standards. Taking stock of the situation in the penitentiary system, it noted that only forty Russian regions possessed facilities capable of providing accommodation to detainees in accordance with the domestic sanitary norm of four square metres per inmate, whereas pre-trial detention centres in eighteen regions could offer less than three square metres per inmate. The Programme's annual targets were to bring sixty per cent of remand centres into compliance with the Russian sanitary norm by 2011 and all of them by 2016. However, less than one per cent of remand centres were expected to be compatible with the international standard of seven square metres per inmate by 2011 and only 11.4 per cent by 2016.

189. Notwithstanding a perceptible trend towards an improvement in material conditions of detention and a reduction in the number of prisoners awaiting trial, the urgency of the problem of overcrowding has not abated in recent years. The Court's findings in the instant case and the continuing influx of new applications illustrate the gravity of the situation in some remand centres where inmates still do not have at their disposal an individual sleeping place, as was the case for Mr Ananyev, and highlight the absence of effective domestic remedies for either putting an end to an ongoing violation or obtaining compensation for a period of detention that has already ended. It is a reason for grave concern for the Court that the violations identified in the present judgment occurred more than five years after the Kalashnikov judgment in which the problem of overcrowding had been identified for the first time, notwithstanding the respondent Government's obligation under Article 46 to adopt, under the supervision of the Committee of Ministers, the necessary remedial and preventive measures, both at individual and general levels (compare *Burdov* (no. 2), cited above, § 134).

12.5 Professor Bowring also draws attention to concerns raised in an April 2014 Report of the Human Rights Commissioner of the Russian Federation about grave problems in the penitentiary system. He notes the absence of any reference to the Ordinance (*rasporяzheniye*) of the Russian Government of 14th October, 2010, No. 1772 on the Conception of the Development of the Penitentiary System of the Russian Federation to 2020 which launched a very ambitious programme for transforming the Russian prison estate, and criticisms of those plans by the President's Council for the Development of Civil Society and Human Rights as being entirely unrealistic as to resources and length of time required, or to the response of the Federal Service for Execution of Punishments - the Russian Prison Service - to those criticisms.

12.6 In conclusion, on the prison conditions issues, Professor Bowring concludes:

"I regretfully arrive at the opinion that the assertions [in the additional information of 18th July 2014] carry no weight whatsoever and are entirely unsubstantiated.

There is no substantive evidence so far that Russia is implementing the Action Plan it submitted six months after the *Ananyev* judgment, and the assurances given by the Russian Government cannot be relied upon."

12.7 Turning then to the assertions within the additional information of 18th July, 2014, concerning the judicial system, Professor Bowring contends that the merger of the Supreme Court with the Supreme Commercial Court was anything but a positive measure. He comments:

"19. On 10 October 2013 it was reported that seven judges of the Supreme Commercial Court had resigned. They were one eighth of the Court's judges, and were the longest serving judges, mostly appointed in 1992. In November 2013, 80 law firms in Moscow wrote a letter to President Putin objecting to the changes. They said the merger would de-facto dismantle the arbitration system in the country. Russia's arbitration courts were as a result of Mr Ivanov's reforms much more transparent, independent and modernized than the "parochial" general jurisdiction courts, according to the letter. The reform would hamper business competition in the country and prompt Russian entrepreneurs to take their disputes to foreign courts. Mr Ivanov himself criticized the bill when it came before Parliament, warning that it could lead to "the complete demolition" of the arbitration system in Russia.

20. On 6 February 2014 President Putin signed the law, and Patrick Reevell commented in the *New York Times* that this action was "... seen by many as meant to consolidate the Kremlin's power over the country's judicial system." He quoted Ekaterina Mishina, a Russian lawyer and a visiting professor at the University of Michigan, as saying "It's a very destructive decision. The approach of the Supreme Court will prevail, which is much more conservative, much more Soviet."

21. As Reevell pointed out, Russia's criminal justice system, which the Supreme Court heads, is routinely criticised as susceptible to political pressure, with the cases of the punk activist band Pussy Riot and the oligarch Mikhail Khodorkovsky considered significant examples of those in which legal decisions were delivered from the Kremlin. Critics worry that the new court will be more open to such manipulation. I share these concerns, for the reasons I give below.

22. On 8 March 2014 it was announced that the lower tiers of Arbitrazh Courts will lose a number of their powers. They have now lost their competence to hear cases on challenges to "normative legal acts", that is subordinate legislation, decrees and orders, as well as disputes concerning cadaster values - land registration. In addition, the new Supreme Court will have the right to re-hear decisions of *arbitrazh* courts which have entered into force in cases on violations of administrative law.

23. After a long period of uncertainty, it was announced on 21 May 2014 that the present Chairman of the Supreme Court, Vyacheslav Lebedev, who was born in 1943 and was appointed in July 1989, in the last years of the USSR, will be the Chairman of the new merged court, which will occupy a newly constructed and grandiose building in St Petersburg.

24. This entirely unexpected turn of events marks the definitive end of Mr Medvedev's limited reforms, and of progressive

reform in the judicial system as a whole.

25. The US State Department Country Report on Human Rights in Russia for 2013, published in the summer of 2014, stated as follows:

The law provides for an independent judiciary, but judges remained subject to influence from the executive branch, the military, and other security forces, particularly in high-profile or politically sensitive cases. The law requires judicial approval of arrest warrants, searches, seizures, and detentions. Officials generally honored this requirement, although the process of obtaining judicial warrants was occasionally subverted by bribery or political pressure.

According to an April report by the ombudsman for human rights, Vladimir Lukin, almost 57 percent of the 24,930 complaints received by his office in 2012 related to violations of civil rights. Of these, more than 67 percent involved alleged violations of the right to a fair trial.

Judges routinely received calls from superiors instructing them how to rule in specific cases. The Presidential Council for the Development of Civil Society and Human Rights reported that "in practice [judges] do not possess genuine, as opposed to declaratory, independence. The powers of a judge who does not agree to carry out the requests may be prematurely terminated. In such a situation, the conscientious judge is subject to pressure from within the judicial system and has no chance of defending his or her own rights."

A November report by the Council of Europe's human rights commissioner on the protection of human rights in the country's judicial system noted concerns that "perceptions persist that judges are not shielded from undue pressure, including from within the judiciary."

During the year authorities initiated criminal proceedings against a deceased individual. On July 11, a court found whistleblower Sergey Magnitskiy guilty of tax evasion in the first posthumous trial in the country's history, in a case that human rights advocates believed was fabricated.

In many cases authorities did not provide adequate protection for witnesses and victims from intimidation or threats from powerful criminal defendants.

Trial Procedures

A judge without a jury typically hears trials (bench trials). The defendant has a legal presumption of innocence. The law provides for the use of jury trials for a limited range of crimes in higher-level regional courts. Certain crimes, including terrorism, espionage, hostage taking, and mass disorder, must be heard by panels of three judges rather than by juries. Juries try approximately 600 to 700 cases each year, or 0.05 percent of all criminal cases. While judges acquit less than 1 percent of defendants, juries acquit an estimated 20 percent. Since 2008 the number of jury trials has continued to decline, which legal experts considered an effort to avoid acquittals in criminal cases. The law allows prosecutors to appeal acquittals, which they do in most cases. Prosecutors may also appeal what they regard as lenient sentences. Appellate courts reverse approximately 30 percent of acquittals and remand them for a new trial, although these cases often end in a second acquittal.

26. The fact that the Comments seek to rely upon the highly controversial merger is a further reason why the assurances given by the Russian Government should not be acceptable to the Court."

13. Further material submitted on behalf of the respondent

13.1 The Court has also received from the respondent a Human Rights Watch World Report 2014, the Report of the UN Special Rapporteur on the Independence of Judges and Lawyers in the Russian Federation dated 30th April, 2014, and a document entitled UK Government Foreign and Commonwealth Office Corporate Report – Russia – Country of Concern: latest update 30th June, 2014. The Court has read and considered all of this material.

13.2 The Court notes in particular that the UN Special Rapporteur in his report comments, *inter alia*, as follows (at para 45):

"45. Another related issue is the extremely low acquittal rate. As indicated by the former Special Rapporteur, it is about 1 per cent (A/HRC/11/41/Add.2, para. 37), which would suggest that the presumption of innocence is not consistently respected in practice. According to many sources, it is easier for judges to ignore the poor quality of an investigation rather than take the responsibility of acquitting the defendant. Some judges seem to be unaware of their duty to acquit the accused when the prosecutor fails to provide sufficient evidence for his or her prosecution. In other instances, judges are said to be under pressure from the prosecution to issue a guilty verdict. Interestingly, that attitude does not seem to apply to State officials and law enforcement officials, who are reportedly 20 times more likely to be acquitted for an offence than other persons."

13.3 In addition, the Court has been provided with a booklet containing seventeen cases that had come before the E.Ct H.R., and which had been decided against the Russia Federation, in the month of October 2014 alone, alleging various breaches of the ECHR, and in particular breaches of articles 3, 5, 6, and 13 ECHR. These were tendered not as relevant authorities, but as illustrating ongoing systemic problems with the criminal justice, judicial and penal systems in the Russia Federation. The seventeen cases to which the Court was referred were:

Article 3 Breaches

1. *Adeishvili v. Russia* - Application No: 43553/10
2. *Belov v. Russia* - Application No: 27693/06
3. *Babushkin v. Russia* - Application No: 5993/08

4. *Chernetskiy v. Russia* - Application No: 18339/04
5. *Gasnov v Russia* - Application No: 54866/08
6. *Losevskiy v. Russia* - Application No: 3243/06
7. *Makovoz v. Russia* - Application No: 10011/10
8. *Mostipan v. Russia* - Application No: 32042/09
9. *Smertin v. Russia* - Application No: 19027/07

Article 6 Breaches

10. *Liseytseva /Maslov v. Russia* - Application No: 39483/05
11. *Sulden v. Russia* - Application No: 20077/04
12. *Mostipan v. Russia* - Application No: 32042/09

Article 13 Breaches

13. *Chernistskey v. Russia* - Application No: 18339
14. *Istratov v. Russia* - Application No: 28505/09
15. *Smertin v. Russia* - Application No: 19027/07
16. *Mysin v. Russia* - Application No: 6521/ 07

Article 5. 1; 5. 4 Breaches

17. *Shabalin v Russia* - Application No: 1937/05

13.4 The Court has read, considered and taken account of this body of case law as illustrative of particular ongoing problems at the relevant dates.

14. Legal Submissions

14.1 Although the respondent's case is based upon seventeen discrete points of objection, some of those are technical and some are substantive. The Court has received written submissions from the respondent dealing in depth with the substantive objections that have been raised. However, the technical issues were dealt with in oral submissions. In fairness to the respondent, while his technical objections were not abandoned, they were not unduly pressed in argument.

14.2 The overwhelming majority of the submissions, both written and oral, were addressed to the substantive objections raised by the respondent, and these represent the core issues with which it is necessary for this Court to engage. In the written submissions filed on behalf of the respondent these are dealt with for convenience under four broad headings which the Court proposes to adopt in its discussion and analysis of the evidence. These are:

- A. The risk of inhumane and degrading treatment if the respondent were to be surrendered to the requesting State;
- B. The absence of any right or guarantee that the respondent could take proceedings for the purpose of challenging the lawfulness of his detention in the requesting state;
- C. The concern that the respondent will not receive a fair trial before an independent and impartial judiciary in breach of article 6 ECHR;
- D. The absence of a *prima facie* case tending to show that the respondent committed the offence for which the requesting state seeks his extradition for the purposes of putting him on trial.

14.3 In addition with the leave of the Court the respondent advanced the further point of objection, albeit not pleaded in terms, based on Article 8 ECHR.

14.4 No written submissions were filed on behalf of the applicant. However, counsel for the applicant made oral submissions at the hearing in response to both the written and oral submissions of the respondent on the substantive issues, and the Court will refer to his oral submissions where appropriate.

15. Discussion and Analysis

15.1 Technical Issues

15.1.1 The Court has carefully considered the submissions on both sides with respect to the technical issues raised by the respondent. The Court is satisfied that all of the technical matters of which the Court must be satisfied before it could make a committal order under s.29 of the Act of 1965 have been satisfied. The Court has already set forth its reasons for being so satisfied in the earlier section of this judgment entitled "The request for extradition – legal formalities".

15.2 Substantive Issues

**A. The risk of inhumane and degrading treatment if
the respondent were to be surrendered to the requesting State**

15.2.1 The law in this jurisdiction in respect of objections to traditional extradition, or rendition on foot of a European arrest warrant, based on article 3 issues is well settled at this stage. The seminal authority is that of *Minister for Justice and Equality v. Rettinger* [2010] 3 I.R. 783 While *Rettinger* was a European arrest warrant case I have already stated in *Attorney General v. O'Gara* [2012] IEHC 179, (Unreported, High Court, Edwards J., 1st May, 2012) that I consider that the *Rettinger* principles can be applied, with appropriate modifications, to the extradition context.

15.2.2 In *Attorney General v. O'Gara* [2012] IEHC 179, (Unreported, High Court, Edwards J., 1st May, 2012) I suggested that the *Rettinger* principles, modified for application in the Ireland/USA extradition context, could be expressed as follows:

- By virtue of the absolute nature of the obligation imposed by Article 3 of the European Convention on Human Rights and Fundamental Freedoms, which provides that '*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*', the objectives of the [Washington Treaty] cannot be invoked to defeat an established real risk of ill-treatment contrary to Article 3. (See analogous remarks of Fennelly J. at 813 in *Rettinger* regarding the objectives of the system of surrender pursuant to the Council Framework Decision on the European Arrest Warrant);
- The subject matter of the court's enquiry "is the level of danger to which the person is exposed." (*per* Fennelly J. at 814 in *Rettinger*);
- "it is not necessary to prove that the person will probably suffer inhuman or degrading treatment. It is enough to establish that there is a '*real risk*'." (*per* Fennelly J. at 814 in *Rettinger*) "in a rigorous examination." (*per* Denham J. at 801 in *Rettinger*). However, the mere possibility of ill treatment is not sufficient to establish an applicant's case. (*per* Denham J. at 801 in *Rettinger*);
- A court should consider all the material before it, and if necessary material obtained of its own motion. (*per* Denham J. at 800 in *Rettinger*);
- Although a respondent bears no legal burden of proof as such, a respondent nonetheless bears an evidential burden of adducing cogent "evidence capable of proving that there are substantial grounds for believing that if he (or she) were returned to the requesting country he, or she, would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention." (*per* Denham J. at 800 in *Rettinger*);
- "It is open to a requesting State to dispel any doubts by evidence. This does not mean that the burden has shifted. Thus, if there is information from an applicant as to conditions in the prisons of a requesting State with no replying information, a court may have sufficient evidence to find that there are substantial grounds for believing that if the applicant were returned to the requesting state he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the Convention. On the other hand, the requesting State may present evidence which would, or would not, dispel the view of the court." (*per* Denham J. at 801 in *Rettinger*);
- "The court should examine the foreseeable consequences of sending a person to the requesting State." (*per* Denham J. at 801 in *Rettinger*). In other words the Court must be forward looking in its approach;
- "The court may attach importance to reports of independent international human rights organisations." (*per* Denham J. at 801 in *Rettinger*).

15.2.3 I see no reason why the same principles should not also apply in a case, such as the present, of an extradition request based on the European Convention on Extradition 1957.

15.2.4 It is clear from the evidence adduced, and from the decisions of the European Court of Human Rights in *Kalashnikov v Russia* (Applic No 47095/99, 15 July 2002) and, particularly, *Ananyev & Ors v Russia* (Applic Nos 42525/07 & 60800/08, 10 January 2012) where that Court issued a pilot judgment, that until as recently as the middle of the last decade – 2005 to 2008 – there was a systemic problem with conditions in prisons and places of detention in the Russian Federation that had the potential to amount to inhumane and degrading treatment.

15.2.5 Whether such conditions would in any particular individual's case be inhumane and degrading would, of course, depend on the circumstances of the case. Such circumstances may include the nature of the complaint, whether it be in respect of poor physical facilities or infrastructure, deficiencies in the regime such as poor or non-existent healthcare, or torture or physical/mental abuses; the duration of exposure to the impugned conditions; the health and condition of the individual prisoner; whether the prisoner would be at particular risk due to some personal characteristic such as gender, ethnicity, sexual orientation etc; and whether the conditions complained of related to a single issue, or multiple issues operating cumulatively.

15.2.6 Nevertheless, it can be stated as a general proposition that if the situation were to remain as described in *Kalashnikov* and *Ananyev* the starting point for any Court considering an extradition request from the Russian Federation would have to be concern about the possible existence of a real risk that the rights of a proposed extraditee guaranteed under article 3 of the ECHR would not be respected by the requesting state.

15.2.7 In that respect this Court finds itself in complete agreement with the general approach adopted by the very experienced extradition judges at Westminster Magistrates Court in the neighbouring jurisdiction of England and Wales, who deal with a considerably greater number of extradition requests from the Russian Federation than does this Court, namely insisting that before contemplating the extradition of a requested person to Russia the Court should have evidence of a significant improvement in prison conditions overall, or specific detailed assurances as to the conditions in which the individual concerned will be held.

15.2.8 The Court is grateful to counsel for the respondent for drawing the Court's attention to *Russian Federation v Trefilov* (unreported, WMC, Evans DJ., 16 November 2012); *Russian Federation v Tyurin* (unreported, WMC, Evans DJ., 04 March 2013); and *Russian Federation v Fotinova* (unreported, WMC, Riddle DJ., 21 March 2013).

15.2.9 The Court has carefully considered the evidence in the present case. There has undoubtedly been some improvement in

conditions, particularly physical conditions, in prisons and places of detention in Russia since the judgment in *Ananyev*. This is acknowledged in the latest CPT report and in other recent country of origin information. Moreover, the additional information furnished by the requesting state points to a series of specific improvements achieved to date, and plans for further improvements and reforms. However, the Court is inclined to accept the criticisms articulated by Professor Bowring concerning the pace of reform, the actual prevalence of meaningful improvements across the system, and the absence of much evidence of a rights based culture within Russian prisons and detention centres. It seems to the Court that notwithstanding such improvements as have been made, and these are of course to be welcomed, there continues to be a systemic problem in the Russian penal system, particularly with respect to poor physical conditions and the ill-treatment of prisoners and detainees.

15.2.10 In this particular case, however, it is urged upon the Court by counsel for the applicant that this Court is in receipt of very specific assurances concerning both where and in what conditions the respondent will be held if extradited. The Court agrees with counsel for the applicant that it has received important assurances. In that regard, the Court is referring to the assurances given at points four and five in the additional information furnished on the 9th October, 2014. The Court's concerns are allayed in the specific case of the respondent in the light of those assurances.

15.2.11 In the circumstances, the Court is not satisfied that there are substantial grounds for believing that a real risk exists that the respondent, if extradited, will be detained in conditions that would breach the rights guaranteed to him under article 3 of the ECHR. The Court is not therefore disposed to uphold the objection based on prison conditions.

15.3 B. The absence of any right or guarantee that the respondent could take proceedings for the purpose of challenging the lawfulness of his detention in the requesting state

15.3.1 The respondent's case under this heading is based upon article 108 and 109 of the Code of Criminal Procedure as criticised by the E.Ct.H.R. in the case of *Muminov v Russia* (Application No: 45202/06). He also relies on *Mamedova v Russia* (Application No: 7064/05) where such judicial review and detention orders as is possible under Russia law were significantly criticised as being too slow and consequently ineffective to provide vindication of an applicant's rights. In addition, he invokes *Ellis v O'Dea* [1989] I.R.530 where Walsh J said (at 537):

"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 procedures inside or outside this jurisdiction, which in this jurisdiction would amount to a denial or an infringement of the constitutional right to fair procedures.

15.3.2 The difficulty that this Court is faced in regard to this complaint is that there is an evidential deficit with respect to it. Reports of cases decided before the Court of Human Rights such as *Muminov v Russia*, or *Mamedova v Russia* do not provide a sufficient evidential basis to sustain a claim such as that being made. The facts of those cases cannot constitute evidence in the present case. Moreover, references to the issue of available remedies in the country of origin information provided are very general and somewhat equivocal. For example, in the US State Dept Report 2013, the report acknowledges that Russian law prohibits arbitrary arrest and detention, but it says that problems remain. It also says that the law provides mechanisms for individuals to file lawsuits against authorities for violations of civil rights, but that these mechanisms often did not work well.

15.3.3 In the Court's view to sustain this complaint a proper affidavit of laws would be required providing specific and up to date information concerning what remedies are available under Russian law to a person who claims to be unlawfully detained, and their limitations. There is no such evidence before the Court. The issue is centrally concerned with a matter of Russian law and yet the respondent has chosen not to place an affidavit of laws from a properly credentialed expert in Russian law before the Court, speaking to the current position with respect to the presence or absence of *habeas corpus*, or a cognate remedy, by means of which a person who wishes to challenge the lawfulness of his detention in Russia can do so. The Court has already ruled that Professor Bowring is not an expert in Russian law, though he undoubtedly has considerable knowledge of, and expertise concerning, structural issues affecting the Russian criminal justice and penal systems.

15.3.4 In the absence of evidence sufficient to support the assertions being made concerning the absence of *habeas corpus*, or a similar type remedy in Russia the Court simply cannot uphold this objection.

15.4 C. The concern that the respondent will not receive a fair trial before an independent and impartial judiciary in breach of Article 6 ECHR

15.4.1 The starting point in the consideration of this issue is to state that in order to sustain his complaints under this heading the respondent must demonstrate that there are substantial grounds for believing that there is a real risk that he will not receive a fair trial to such an extent that he is likely to suffer a flagrant denial of justice.

15.4.2 In *Mamatkulov v Turkey* [2005] 18 BHRC 203 the E.Ct.H.R. held:

"What the word flagrant is intended to convey is a breach of the principles of a fair trial guaranteed by Article 6, which are so fundamental as to amount to a nullification, or destruction of the very essence of the rights guaranteed by that Article".

15.4.3 The respondent in this case has adduced a substantial body of evidence that is consistent in painting a picture of long standing structural weaknesses and deficiencies in the Russian judicial and criminal justice systems. The evidence in question consists of country of origin information coming from numerous independent and reputable sources such as the US State Dept, The Council of Europe's CPT, The United Nations, The UK Home Office, Human Rights Watch amongst other, and of course the evidence of Professor Bowring

15.4.4 Amongst the weaknesses and deficiencies identified are concerns about the independence of the judiciary; biases and

unfairness' in the system; a disproportionately high rate of convictions (in excess of 99%) save where public officials are being tried for abuses where the rate of convictions is much less; difficulties in defendants obtaining effective legal representation; an unhealthy relationship between prosecutors and the judiciary where excessive deference is shown to the prosecution service and judges appear biased in favour of prosecutors; an unhealthy relationship between the prosecution service and law enforcement agencies with the latter frequently coercing confessions by means of violence, sometimes amounting to torture, excessive force and ill-treatment of persons in custody, and scant respect for the presumption of innocence.

15.4.5 The evidence is really all one way in that regard, despite a number of initiatives mentioned in the additional information furnished on behalf of the requesting state aimed at strengthening the independence of the judiciary and the prosecution service. However there has been no engagement whatever with the matter which this Court views with greatest concern, i.e., that there is strong evidence to suggest that in many Russian trials no more than lip service is paid to the presumption of innocence. In this context the Court again recalls the comments at para. 45 of the Report of the UN Special Rapporteur on the Independence of Judges and Lawyers in the Russian Federation dated 30th April, 2014, quoted earlier.

15.4.6 In *Minister for Justice and Equality v Nolan* [2012] IEHC 249 (Unreported, High Court, Edwards J, 24th May, 2012) this Court identified the presumption of innocence as being a fundamental higher law principle. I said:

"**124.** In the Court's view the presumption of innocence, though it is certainly deployed and finds application within the scope of what is guaranteed by Article 38.1, is in itself a higher legal principle of universal application. It is now well established that when Article 40.4.1° of the Constitution speaks of no citizen being deprived of his personal liberty "save in accordance with law", the word "law" is not to be construed in a positivist way but as referring to the fundamental norms of the legal order postulated by the Constitution. Cases such as *O'Callagan*, previously discussed, *In re Article 26 and the Emergency Powers Bill 1976* [1977] I.R.159 and *King v. The Attorney General* [1981] I.R. 233 all illustrate, and testify to this. In the course of criticising the provision of the Vagrancy Act 1824 that was the subject of a constitutional challenge in *King*, Henchy J. said at p. 257:

"It violates the guarantee ...that no citizen shall be deprived of personal liberty save in accordance with law – which means without stooping to methods which ignore the fundamental norms of the legal order postulated by the Constitution."

125. This Court is satisfied that one of those fundamental norms is the presumption of innocence. It is much more than a mere procedural trial right. It is recognised in the vast majority of the world's legal systems as being a fundamental principle of the justice to which every person is entitled as an aspect of their humanity. It is as old as the hills. Its provenance and origins were described at length by the U.S. Supreme Court in *Coffin v. U.S.* 156 U.S. 432 (1895), where White J. stated at p. 453:

"The principle that there is a presumption of innocence in favour of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law. It is stated as unquestioned in the textbooks, and has been referred to as a matter of course in the decisions of this court and in the courts of the several States."

126. Having cited a long list of cases to illustrate his point, White J. continued:

"Greenleaf [in *On Evidence*, pt 5, 29 note] traces this presumption to Deuteronomy, and quotes Mascardius Do Probationibus to show that it was substantially embodied in the laws of Sparta and Athens...Whether Greenleaf is correct or not in this view, there can be no question that the Roman law was pervaded with the results of this maxim of criminal administration, as the following extracts show:"

127. Having provided a long list of references to Roman law, he then noted that while there was some uncertainty as to when the presumption was, in precise words, stated to be a part of the common law there did not appear to be express mention of it much before the early 19th century. He went on to observe, however, that:

"Whether this statement is correct is a matter of no moment, for there can be no doubt that, if the principle had not found formal expression in the common law writers at an earlier date, yet the practice which flowed from it has existed in the common law from the earliest time".

128. He then goes on to cite examples recorded in the works of Fortesque (*De Laudibus Legum Angliae*, Amos Translation, 1825) ; Lord Hale (2 Hale P.C. 290) and Blackstone (2 Bl Comm c.27, marg. P. 358, *ad finem*).

129. Moreover, as every modern day lawyer will have learned as a student, the presumption of innocence was characterised by Viscount Sankey in *Woolmington v. D.P.P.* [1935] A.C. 462 as the 'golden thread' running through the web of the criminal law."

15.4.7 The Court readily acknowledges that the derivation of the principle as discussed in *Nolan* focused on its common law origins, and Russia is of course a civil law system. Be that as it may, the Court is confident in asserting its belief that the presumption of innocence is not just a higher principle of law applicable only to, or to be observed in, adversarial trials in common law jurisdictions. This Court on the basis of extensive engagement in the extradition sphere with the legal systems in many civil law countries takes judicial notice that the presumption of innocence is invariably also a feature of criminal justice systems based on civil law principles. Moreover, the presumption of innocence is expressly guaranteed in article 6(2) ECHR, and most civil law jurisdictions with which this Court has had to deal have signed and ratified the ECHR. Significantly, the requesting state in this case is a signatory to, and has ratified, the ECHR.

15.4.8 In this Court's view, the failure of a court to respect the presumption of innocence would be so egregious a matter as to amount to a flagrant denial of justice in the *Mamakuulov* sense i.e., something so fundamental as to amount to the nullification, or destruction, of the notion of a fair trial as guaranteed by article 6 ECHR.

15.4.9 In fairness to the requesting state in this case, it has at no time sought to suggest that their criminal justice system does not recognise the presumption of innocence. However, by the same token, it has not engaged at all with the considerable evidence that there is an exceptionally low rate of acquittals in Russian courts, that there is perceptible bias towards the prosecution, and that

whatever about the stated position in Russian law the reality is that in many cases the accused *de facto* has to prove his innocence. Accordingly the issue for this court is whether it can be confident that the presumption of innocence will be respected in the respondent's case in the event of him being extradited.

15.4.10 Regrettably, in the absence of any engagement with these issues by the requesting state the Court finds that its concerns are not allayed. It is therefore of the view that substantial grounds exist for believing that there is a real risk that the respondent will not receive a fair trial to such an extent that he is likely to suffer a flagrant denial of justice.

15.4.11 The Court is therefore disposed to uphold the objection under this heading.

15.5 D. The absence of a prima facie case tending to show that the respondent committed the offence for which the requesting state seeks his extradition for the purposes of putting him on trial.

15.5.1 The respondent bases this aspect of his case on certain remarks of Henchy J in *Shannon v. Ireland* [1984] I.R. 548, where he stated:

"Extradition treaties and reciprocal extradition legislation operate on the presumption that both parties to extradition proceedings will act in good faith. That is not to say that a *prima facie* case must necessarily be shown to exist at the time extradition is sought in respect of a pending charge. It is sufficient if, on the particular extradition being questioned, someone duly authorised to do so avers in good faith that a *prima facie* case exists. If, however, it were to transpire that the charge in the warrant was trumped up, insubstantial or brought for ulterior purposes, the good faith which is a prerequisite for the operation of extradition would be absent and the extradition arrangements would break down."

15.5.2 It seems to this Court that it cannot be asserted on any stateable basis either that no *prima facie* case actually exists against this respondent, or that no one authorised to do so has averred that there is a *prima facie* case. The requesting state has furnished detailed particulars of the evidence they rely upon in support of the case they wish to bring to trial. The Russian authorities rely principally on the alleged confession made by the respondent to his sister. The fact that the sister has recently sought to repudiate her statement is neither here nor there. There is clearly a *prima facie* case on any view of the matter. That is not to say that the respondent would necessarily be convicted if afforded a fair trial in which the evidence was properly tested. Who is to say?

15.5.3 The Court is not therefore disposed to uphold the objection based on want of evidence asserting the existence of a *prima facie* case.

15.5.4 It is also convenient under this heading to deal with the suggestion that the respondent is not in fact wanted for trial but merely for questioning in the context of an on-going investigation. The Court has considered in detail all of the documents supporting the request and the procedural history of the case before the Russian courts. Having done so, I am satisfied that a decision in principle has been taken to charge and try the respondent, and that he is not merely wanted for questioning. He is at present a suspect, but a suspect whose prosecution is intended. The fact that further investigations, including the interviewing of the suspect, still have to be carried out does not affect this.

15.5.5 The Court therefore rejects the objection to the effect that the respondent is wanted solely, or primarily, for the purposes of investigation.

16. The Objection based on Article 8 ECHR

16.1 The Court is not disposed to uphold the objection based upon alleged interference with the right to respect for family life, as guaranteed under Article 8 ECHR. In considering this issue the Court has sought to apply the jurisprudence developed in the European arrest warrant context its judgments in *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 (Unreported, High Court, Edwards J., 19th June, 2013), and *Minister for Justice and Equality v. R.P.G.* [2013] IEHC 54 (Unreported, High Court, Edwards J., 18th July, 2013). In doing so it has engaged in a rigorous examination of the evidence, both for the purpose of assessing the public interest in the respondent's extradition, and the extent to which the proposed extradition measure would interfere with the rights of the respondent, his wife and his children D.S and F.S. I have also considered the best interests of the children concerned and have treated them as a primary consideration. The Court notes that D.S. has now attained his majority, and so the primary focus of this aspect of the Court's deliberation's has been on the situation of F.S., and how the respondent's extradition would affect her.

16.2 I have concluded that there is a substantial public interest in the respondent's extradition, and in circumstances where the lengthy time that has elapsed is largely due to the respondent having absconded there remains a pressing social need for his extradition. I have taken into account the roots that the respondent has put down in our society since his arrival in 2000, and in particular that he enjoys residency status, that his immediate family all now live here, that he and his wife have established a substantial business here, that his daughter F.S. was born here and is in school here, and that the respondent has purchased land and is building/ has built a house on it. However, these roots were put down in circumstances where the respondent must have known and appreciated that his situation was perilous and that if he was successfully tracked down by the Russian Federation he could face extradition. In the circumstances the weight to be attached to such ties is much less than it would be if that were not the case.

16.3 Notwithstanding the various matters that the respondent has put forward in his affidavit there is no reason to believe that his extradition would, *per se*, have profoundly injurious or extraordinary consequences for him, or his family. It would certainly be distressing and upsetting for them, but this is the case in every, or virtually every, extradition or rendition case where the fugitive has settled in the requested state. It seems reasonable to infer that F.S., would remain in the custody of, and continue to be raised by, the respondent's wife and would not be *de facto* orphaned by the proposed extradition measure. It would unquestionably be difficult for the entire family. The Court does not seek to gainsay that. However, the evidence adduced by the respondent simply does not meet the threshold to justify a finding that the proposed extradition measure would be disproportionate to the legitimate aim being pursued by the issuing state. The substantial and continuing public interest that exists in favour of the respondent's extradition is not outweighed by the interference with the personal rights of the respondent and his family that that would occasion.

17. The Court's Decision

17.1 This Court having upheld the Article 6 based objection, I am not disposed in the circumstances to make an order pursuant to s. 29 (1) of the Act of 1965 as amended committing the respondent to await the order of the Minister for his extradition. In the circumstances the respondent must be discharged from the proceedings and from his bail.

