Neutral Citation: [2014] IEHC 540

**THE HIGH COURT**

**Record No: 2012 No. 155 EXT**

**Between:**

**THE ATTORNEY GENERAL**

**Applicant**

**- v -**

**JAKUB SEBASTIAN PIOTROWSKI**

**Respondent**

**Judgment of Mr Justice Edwards delivered on the 21st day of October, 2014**

**Introduction:**
In these proceedings Ukraine seeks the extradition of the respondent with a view to executing a sentence of 9 years deprivation of liberty imposed upon him by a court in Ukraine on the 7th February, 2006, in respect of an offence charged under article 307, part 3 in conjunction with article 27, part 3 of the Criminal Code of Ukraine. In summary, the offending conduct involved the importation into Ukraine and sale, as part of an organised criminal group, of quantities of prohibited drugs/psychotropic substances, specifically methylenedioximethamphetamine (MDMA) and amphetamine.

The Court that convicted and sentenced the respondent was the "Луцький міськрайонний суд Волинської облаті (Укрраїа)" which has been variously translated in the papers before me as "Lutskyy District Court in Volynska Oblast, Ukraine"; "Lutsk District Court, Volyn Region, Ukraine" or the "Lutsk Municipal Court in Volyn Region, Ukraine". However, it is clear that these slightly different names are just an artifact of translation and that they all refer to the same court.

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

Section 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."

Both Ireland and Ukraine are parties to the European Convention on Extradition 1957 and the Minister for Foreign Affairs has applied Part II of the Act of 1965 to Ukraine by means of the Extradition Act 1965 (Application of Part II) Order, 2000 (S.I. No. 474 of 2000).

Section 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."

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."

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

(European Union Conventions) Act 2001:

> "(a) If the Minister receives a request made in accordance with this Part for the extradition of any person, he shall, subject to the provisions of this section, certify that the request has been made.
>
> (b) On production to a judge of the High Court of a certificate of the Minister under paragraph (a) stating that a request referred to in that paragraph has been made, the judge shall issue a warrant for the arrest of the person concerned unless a warrant for his arrest has been issued under section 27."

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

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

> "29.—(1) Where a person is before the High Court under section 26 …. and the Court is satisfied that—
>
> (a) the extradition of that person has been duly requested, and
>
> (b) this Part applies in relation to the requesting country, and
>
> (c) extradition of the person claimed is not prohibited by this Part or by the relevant extradition provisions, and
>
> (d) the documents required to support a request for extradition under section 25 have been produced,
>
> the Court shall make an order committing that person to a prison ….. there to await the order of the Minister for his extradition."

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

> "25.—(1) A request for extradition shall be supported by the following documents—
>
> (a) the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable or, as the case may be, of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting country;
>
> (b) a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of the requesting country;
>
> (c) a copy or reproduction of the relevant enactments of the requesting country or, where this is not possible, a statement of the relevant law;
>
> (d) as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and nationality, including, where available, any fingerprint, palmprint or photograph, and
>
> (e) any other document required under the relevant extradition provisions.
>
> (2) For the purposes of a request for extradition from a Convention country, a document shall be deemed to be an authenticated copy if it has been certified as a true copy by the judicial authority that issued the original or by an officer of the Central Authority of the Convention country concerned duly authorised to so do."

**The request for extradition in this case – legal formalities**

The Court is satisfied on the evidence before it that the respondent's extradition has been duly requested, by means of a request in writing, dated the 12th May, 2010, from the Ministry of Justice of Ukraine addressed to the "Competent Authority of Ireland", dated the 12th May, 2010, and communicated to the Irish Department of Foreign Affairs by the Embassy of Ukraine in Dublin on the 8th July, 2010, and in respect of which request supplementary details provided in writing by the Ministry of Justice of Ukraine, and dated the 8th April, 2011, were later communicated to the Irish Department of Foreign Affairs by the Embassy of Ukraine in Dublin on the 15th September, 2011, as additional information to be considered with the said request. The court is satisfied that the said request, when read in conjunction with the said additional information, constitutes a proper request in accordance both with s. 23 of the Act of 1965 and with article 12 of the European Convention on Extradition 1957.

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

The Court has had produced to it a certificate of the Minister for Justice and Equality, dated the 18thJune, 2012, 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 day of 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 day of July 1988,
>
> AND WHEREAS the Convention has also been ratified or acceded to on behalf of Ukraine,
>
> AND WHEREAS on 19th day of 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 Ukraine,
>
> AND WHEREAS I have on the 16th day of September 2011 received a request duly made by Ukraine in accordance with Part II of the Extradition Act 1965 and the said Convention for the extradition of Jakub Sebastian Piotrowski which has been duly communicated by its Embassy,

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

On the 26th June, 2012, the High Court issued a warrant for the arrest of the respondent pursuant to s. 26(1)(b) of the Act of 1965 and the respondent was duly arrested on the 23rd August, 2012. He was granted bail and has been remanded in that status from time to time pending the conclusion of these proceedings.

I am satisfied that in the present case that the Court has had produced to it in respect of each offence for which the respondent's extradition to Ukraine is sought the original or an authenticated copy of the conviction and sentence or detention order immediately enforceable. In that regard the Court has had particular regard to:

- The document entitled "Sentence in the name of Ukraine" setting forth the rulings and orders of the Lutsk Municipal Court in Volyn Region, Ukraine, dated 7th February, 2006 sentencing the respondent to 9 years deprivation of liberty in respect of the said offences;

- The Warrant of Execution of the Lutsk Municipal Court in Volyn Region, Ukraine, dated 19th April, 2006, in respect of the said sentence;

- The statement setting forth the procedural history of the case addressed to the "Competent Authority of Ireland", and dated the 14th February, 2011, from the Lutsk Municipal Court in Volyn Region;

- The statement provided by way of additional information, elaborating further on the procedural history of the case, addressed to the "Competent Authority of Ireland", and dated the 3rd September, 2012, from the Lutsk Municipal Court in Volyn Region.

Authentication is provided in the following circumstances. The Court has been provided with each of the said documents in the Ukrainian language accompanied by a certified English translation. In each instance the document in the Ukrainian language contains a circular stamp on each page bearing the State Emblem of Ukraine and the words (as translated) "Lutsk Municipal Court, Volyn Region, Ukraine, Identification Code 02890417", as well as the name(s), and personal signature(s), of one or more of the judges concerned. Moreover the documents in question were transmitted under the cover of original letters from the Ministry of Justice of Ukraine, addressed to the Department of Justice, Equality and Law Reform, 94 St Stephen's Green, Dublin 2, Ireland, and forwarded to the addressee by the Embassy of Ukraine in Dublin. No issue is being taken as to the sufficiency of the authentication provided, and I am satisfied in any event that it is sufficient.

I am further satisfied that the Court has had produced to it a statement of each offence for which extradition is requested specifying, as accurately as possible, the time and place of commission, its legal description and a reference to the relevant provisions of the law of Ukraine. Indeed, the information in question is set forth in considerable detail in the document entitled "Sentence in the name of Ukraine" previously referred to.

I am further satisfied that in the present case the Court has had produced to it a copy or reproduction of the relevant provisions of the Ukrainian Criminal Code, and in particular articles 27 and 307 respectively of the said code.

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

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

**Correspondence and Minimum Gravity**
No issue has been raised as to either correspondence or minimum gravity.

However, the Court must nevertheless be satisfied in accordance with s. 10 of the Act of 1965 that the offences to which the extradition request relates are extraditable offences. The concept of an extraditable offence embraces both a double criminality or correspondence requirement, and a minimum gravity requirement.

In regard to correspondence the Court is required to be satisfied in each instance that the offence is not just an offence under the laws of the requesting state but also that it is "an offence punishable under the laws of the State", i.e., that the underlying facts if proven before an Irish court would amount to an offence under Irish law.

In terms of the minimum gravity requirement, the Court must also be satisfied that in each instance the offence attracts, potentially, the requisite threshold penalty, both under the law of the requesting state and under the law of this State, in order to qualify as an extraditable offence.

The relevant statutory provisions are subsections (1), (3) and (4) respectively, of s. 10 of the Act of 1965 as amended by s. 11 of the Extradition (European Union Conventions) Act 2011, and these, in their precise terms and to the extent relevant, provide:

"10.—(1) … 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."

As previously stated, the offending conduct said to constitute the offence of which the respondent has been convicted and sentenced in Ukraine, and to which the extradition request relates, may be summarized as involving importation into Ukraine and subsequent sale, as part of an organised criminal group, of quantities of prohibited drugs/psychotropic substances, specifically methylenedioximethamphetamine (MDMA) and amphetamine. A detailed description of the specifics of the offending conduct is recited in the document entitled "Sentence in the name of Ukraine" previously referred to. As it runs to several A4 pages of closely typed text it is neither convenient, nor necessary, to reproduce it in this judgment. It is sufficient to state that, approaching the matter of correspondence in accordance with the jurisprudence of the Supreme Court as set forth in *Attorney General v. Dyer* [2004] 1 I.R. 40, and with due regard to s.10(1), (3) & (4) of the Act of 1965 as amended, this Court is satisfied upon a consideration of the specifics of the offending conduct to find correspondence with the offence in Irish law of possession of a controlled drug for the purposes of sale or supply, contrary to s.15 of the Misuse of Drugs Act 1977; alternatively, with the offence in Irish law of importation of a controlled drug, contrary to section 21(2) of the Misuse of Drugs Act 1977 and article 4(1)(a) of the Misuse of Drugs Regulations 1988.

In so far as the minimum gravity requirements of s. 10 of the Act of 1965 as amended are concerned, the offence to which the extradition request relates, namely an offence charged under article 307, part 3 in conjunction with article 27, part 3 of the Criminal Code of Ukraine, carried a potential penalty of up to twelve years imprisonment in the requesting state. Moreover a sentence of nine years imprisonment was actually imposed in this case. In addition, the corresponding offences in this State respectively carry potential penalties of imprisonment for life (in the case of the s.15 offence) and fourteen years imprisonment (in the case of the importation offence). In the circumstances the minimum gravity requirements for the offence to qualify as an extradition offence are comfortably met.

**Points of Objection**
The respondent contends that his extradition should be refused on the basis that it would amount to a failure to protect and vindicate various rights guaranteed to him by the European Convention on Human Rights (hereinafter "ECHR"), including article 1 (the guarantee that Contracting States, which includes both Ireland and Ukraine, will respect the rights and freedoms defined by the Convention); article 3 (the guarantee that no-one will be subjected to torture or to inhuman or degrading treatment or punishment); article 6 (the guarantee of the right to a fair trial) and article 8 (the guarantee of respect for a person's private and family life and correspondence). In terms of the specific complaints ultimately relied upon, it was pleaded that:

"1. The Respondent's rights pursuant to Article 3 of the European Convention of Human Rights will be breached if extradited in circumstances where the prison conditions amount to torture and are inhumane and degrading. Additionally the conditions he experienced in the Ukraine are of such a degree and nature that they would amount to a breach of his Article 3 rights.

2. The Respondent's rights pursuant to Article 8 of the European Convention of Human Rights will be breached if extradited in circumstances where he is a fundamental and integral part to his family and to his wife rehabilitation.

3. The Respondent's rights pursuant to Article 6 of the European Convention of Human Rights were and will be breached if extradited in circumstances where his conviction was premised on admissions of guilt of co-accused, which were obtained by means of coercion and inducements, and hearsay evidence with the result that the Respondent did not receive a fair trial."

It is well established in law, from cases such as *Ellis v. O'Dea* [1989] I.R. 530; *Russell v. Fanning* [1988] I.R. 505; *Finucane v. McMahon* [1990] 1 I.R. 165; and more recently *Attorney General v. Garland* [2012] IEHC 90, (Unreported, High Court, Edwards J., 27th January, 2012) and *Attorney General v. O'Gara* [2012] IEHC 179, (Unreported, High Court, Edwards J., 1st May, 2012), that the High Court has jurisdiction to refuse to make a committal order under s. 29 of the Act of 1965, if the respondent's extradition would breach, or in certain cases there is a real risk that it would breach, the personal fundamental rights guaranteed to him under the Constitution of Ireland and/or his human rights as guaranteed under the ECHR.

**The Respondent's Evidence**
The Court has before it a twenty seven paragraph affidavit sworn by the respondent on the 7th December, 2012. To the extent that he deposes to material facts these are contained in paragraphs 3 to 20 inclusive, as well as paragraph 26. The remainder of the affidavit deals with formalities or exhibits country of origin information that he wishes this court to have regard to. The Court will review the country of origin information relied upon under a separate heading below.

The salient averments put forward by the respondent were as follows:

"3. The Applicant seeks my extradition to serve a sentence of 9 years. The background to the conviction is as follows - I was arrested by the Ukranian police on the 15th April 2005 and held in custody up until the 23rd September 2005. This is acknowledged by the Requesting state in the documentation provided and dated February 14, 2011 No. 7435, and further it is evidenced by confirmation from the State Penitentiary Service of Ukraine, dated the 19th October 2012. In this regard I beg to refer to a true copy of the said letter upon which marked with the letter "A" I have signed my name prior to the swearing hereof.

4. I was arrested when the police came to our house i.e. Liliya and I.

5. In order to be legally represented Liliya's mother sold her house so that we could pay for our legal representation and

all other necessary incidental costs that are customary in dealing with a legal case in the Ukraine. In this regard I beg to refer to a certificate of sale of the property upon which marked with the letters "B" I have signed my name prior to the swearing hereof. Paying officials in the legal system is a way of life in the Ukraine and so it was necessary for my mother to sell her house to finance our case.

6. On the 23rd September 2005 all 4 parties to the 'group' were sentenced to 5 years imprisonment suspended for a period of 3 years. However this decision was reversed, the State Prosecutor sought € 5,000 not to have the sentence reviewed. We did not have such money and could not pay it. The case was returned for a review of the sentence on foot of an application by the State Prosecutor. The decision to review was made by the Court of Appeal in Volyn region (Ukraine) on the 23rd December 2005. This is acknowledged by the Requesting state in the documentation provided and dated February 14, 2011 No. 7435.

7. For the avoidance of doubt I had no previous convictions from either Poland or the Ukraine and the court was aware of this at the time of my sentence. However the state prosecutor appealed the decision which I say and believe does not appear on its face to be for undue leniency.

8. The verdict of the Lutsk Municipal Court in Volyn region (Ukraine) was reversed and the case was returned for a new trial by the determination of the Court of Appeal in Volyn region (Ukraine) on the 23rd December 2005 with a new hearing date being the 7th February 2006. As is clear from the documentation of the Lutsk Municipal Court of Volyn Region I was not present for the rehearing but I was convicted in my absence and I say and I am informed that I received a sentence of 9 years imprisonment.

9. During my detention I was detained in a prison cell which was 8 square metres in size. There were four people in the cell, a cell that was built for 3 people. The cell consisted of 3 beds, a table and 2 seats. We were not allowed to sit on the bed once we were woken at 6 in the morning. We had no television, no radio and no cards to play.

10. I was kept in the cell for 23 ½ hours a day. I was only given 30 minutes out in a yard for exercise but I did not get this 30 minutes of exercise every day.

11. I was only allowed a shower once a week. The shower room was in the basement of the prison cell and it was extremely unhygienic, it was damp and dirty and there was no hot water.

12. The food in the prison was inedible it was very hard and black. We had a pot in the cell and in order to get some hot water we, the prisoners, created our own device for heating the water which consisted of strapping two blades together and connecting them to a wire which was then used as a heat element. This was our only source of hot water.

13. While in prison I lost 8 kilos in weight. I smoked 60 cigarettes a day due to my nerves from being in the prison, being cooped up in the tiny cell with 3 others, it was suffocating. I received medication for my nerves but received no other medication despite the fact that I suffered from a tooth ache and several other illnesses.

14. While in prison I suffered extreme pain to my tooth and I was not given any treatment despite repeated requests. In the end all I could do to sleep through the pain was to knock myself out against the wall.

15. Any attempts I made to communicate with either Liliya or the Polish consular were stopped and any my letters I tried to send were discarded into a bin.

16. I got married to Liliya on the 15th May 2005 while in prison. In this regard I beg to refer to the certificate of marriage upon which marked with the letters "C" I have signed my name prior to the swearing hereof.

17. Even though I was married in prison I was only saw Liliya on two occasions and only for twenty minutes each time. Also each time I met with Liliya there was always a prison officer present and we were not given any privacy. The police officers would inform me that everything would be alright if I would pay money. Any pictures I had of Liliya were taken from me and disposed in the bin in front of me in order to ridicule and annoy me.

18. While in prison I refused to make admissions to the matters that the police wanted me to admit to. As a result I was beaten on several occasions. The prison officers would use phonebook so as not to leave marks on me. The prison officers constantly asked me for money, as they viewed me, being Polish, as someone with money i.e. a wealthy westerner, and so I was singled out for unfair and harsh treatment because I did not and could not give them money. I was constantly told that I would be found guilty despite my protestations of innocence.

19. I was also put into solitary confinement several times a week which consisted of being placed in a small room which was found in the basement. The room had no windows. The door of the room was studded with sharp studs which meant that I could not knock on the door if I needed anything. I could not see, I was in complete darkness. There were no toilet facilities in the room the smell was disgusting as everyone who was placed in the room used the floor as the toilet. When in solitary confinement I received no food while in the room.

20. Conditions were so bad that I attempted suicide by trying to cut the veins in my wrist. When I was discovered I was taken to a room which was not clean and a prison officer/nurse stitched my wrist. I was given no anaesthetic but the hook with which I was stitched was simply dipped in a spirit. After two weeks the prison officer/nurse took the stitches out. The scar left is quite ugly and evidently not done properly."

(21-25 Country of origin reports exhibited)

"26. In light of the foregoing I say that my conviction is inherently unsound as it was based on coerced, induced and involuntary statements …"

**Country of Origin Information**

The Court has been asked by the respondent to consider and take account of the contents of the following documents:

• Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, from 29 November to 6 December 2011, and published at Strasbourg on 14 November 2012 (hereinafter "the 2011 CPT Report");

• Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, from 1 to 10 December 2012, and published at Strasbourg on 5 September 2013 (hereinafter "the 2012 CPT Report");

• Response of the Ukrainian Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, on its visit to Ukraine from 1 to 10 December 2012 (hereinafter "the Ukrainian response to the 2012 CPT Report");

• U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, Country Reports on Human Rights Practices for 2005, - Ukraine (hereinafter "the 2005 US State Dept Report");

• U.S. Department of State, Bureau of Democracy, Human Rights, and Labour, Country Reports on Human Rights Practices for 2011, - Ukraine (hereinafter "the 2011 US State Dept Report");

• 22nd General Report of the CPT – European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1 August 2011 – 31 July 2012);

The Court has carefully considered each of the country of origin reports listed above. Counsel for the applicant fairly commented at the hearing that they make for "unhappy reading" and the Court agrees with that sentiment.

It should also be recorded that, in addition to the documents presented as country of origin information, the Court was asked to view, and take account of the contents of, a video documentary from a Ukrainian television station concerning prison conditions in Ukraine. On April 2, 2012, the Ukrainian TV channel TVi aired Kostiantyn Usov's documentary about living conditions and treatment of inmates at Kiev's Lukyanivska prison (known in Ukrainian as Lukyanivsky SIZO, or remand prison), as well as alleged widespread corruption among the facility's staff. The film, which is available on the internet at the address: www.globalvoicesonline.org/2012/04/Q5/ukraine-lukyanivska-prison-where-people-are-kept-as-animals/ , and also on YouTube, includes mobile phone footage allegedly made surreptitiously by a number of inmates over several of the preceding months at the journalist's request.

As the applicant did not object, the Court agreed to view the said video documentary *de bene esse* and afterwards to hear submissions as to the weight, if any, which should be attached to it. The video documentary was viewed in open court. Having heard the parties' respective submissions as to the weight to be attached to the video material, the Court has ultimately concluded that some limited weight can be afforded to it. While the surreptitious mobile phone footage is dramatic, the court has had to bear in mind that there is at least a possibility that all or some of it may have been staged or contrived. However, that having been said, the situation portrayed, which relates only to Lukyanivsky SIZO, appears consistent with that described in other undoubtedly reputable country of origin information, and in particular CPT and US Department of State reports. Accordingly, in those circumstances, the court is prepared to attach some degree of weight to the video material on account of its consistency with other material, but considers it must nevertheless significantly discount the weight to be attached to it having regard to the undiscounted possibility of contrivance.

**Additional information concerning prison conditions**
In a letter containing additional information, dated 29th March, 2013, the Ministry of Justice of Ukraine draws attention to the Response of the Ukrainian Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, on its visit to Ukraine from 29 November to 6 December 2011 (hereinafter "the Ukrainian response to the 2011 CPT Report"); and also to information concerning the monitoring of Ukraine by the United Nations Human Rights Council regarding the fulfillment of international obligations in the sphere of human rights, comprised in a document entitled: "Human Rights Council, Working Group on the Universal Periodic Review, Fourteenth session, Geneva, 22 October–5 November 2012, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Ukraine*".

This Court has read and considered the contents of both documents.

In a further letter containing additional information, dated the 24th July, 2013, submitted by the Embassy of Ukraine in Ireland, the Court is informed, *inter alia*, that:

> "A type of penal institution and a place for imprisonment of a person sentenced to imprisonment for a term are determined on the basis of the Order of the Court, with due regards to all the data on the person sentenced under the Criminal Executive Code of Ukraine and under the Order of the Ministry of Justice of Ukraine No. 222/5 of 08 February 2012.
>
> According to the paragraph 1 article 93 of the Criminal Executive Code of Ukraine a person sentenced to imprisonment serves his/her sentence in the same correctional or juvenile correctional facility, as a rule, within the administrative-territorial unit according to his place of residence before conviction.
>
> Additional Information from the Ministry of Justice of Ukraine on the articles of the Criminal Executive Code of Ukraine which regulate the conditions of the sentence and rights of the imprisonments in Ukraine is attached herewith."

The said letter dated the 24th July, 2013 was accompanied by the translated texts of various provision from the Criminal Executive Code of Ukraine, including article 10 (concerning the right of sentenced persons to personal safety); article 107 (concerning the rights and obligations of a person sentenced to imprisonment); article 115 (concerning the substantive maintenance of persons sentenced to imprisonment); and article 116 (concerning medical and sanitary support of persons sentenced to imprisonment). The Court has considered this material and has taken due note of its detailed contents.

**Submissions on behalf of the respondent**
The Court received both written and oral submissions from counsel on behalf of the respondent. The main focus of those submissions was on the article 3 ECHR prison conditions issue, though the article 6 ECHR and article 8 ECHR based objections were not abandoned. Counsel for the respondent contended that all of the reports, and indeed the video evidence, speak to a common theme, namely that the treatment of prisoners in Ukrainian prisons, both in terms of management and accommodation, has been, and continues to be, deplorable. The criticisms contained in the various country of origin reports are numerous, and individually very serious and far reaching, and cumulatively even more so. In counsel's submission the available information creates substantial grounds

for believing that there is a real risk that his client will experience similar deplorable conditions in the event that he is extradited, and that he would be exposed to torture or inhuman or degrading treatment or punishment.

It was submitted that it is important to understand the differences between the various detention and prison establishments that exist in Ukraine. Police central holding establishments are known as "ITT" facilities. More long term pre-trial detention centres are known as "SIZO" facilities. Both of these types of facilities are to be distinguished from "correctional colonies" where sentenced prisoners are held.

As appears from the 2011 CPT report criminal suspects are initially held in police custody before seeing a judge for a maximum of 72 hours; persons who are remanded in pre-trial detention thereafter are in principle transferred to a SIZO, but may sometimes be held for some additional days in an ITT "for logistical reasons". Moreover, occasionally, remand prisoners are returned from a SIZO to an ITT for investigative purposes. However, once a person has been convicted and is to be imprisoned to serve an actual sentence, that person will serve his/her sentence in a correctional colony. Accordingly, if the respondent is extradited to serve the sentence of 9 years that has been imposed upon him he will have to serve that sentence in a correctional colony.

While it is conceded that the respondent's experiences of Ukrainian prisons to date have been confined to initial short term detention in an ITT facility followed by a longer period when he was held in pre-trial detention in a SIZO, and that he has not to date experienced detention in a correctional colony, it is contended that they are nevertheless relevant. It is contended that his personal experiences, as recounted in his affidavit, are consistent with the findings of the CPT in relation to the police establishments that they visited for the purposes of their visit in 2011. Moreover, it was urged that the combined effect of the 2011 CPT report (which concerned police establishments) and the 2012 CPT report (which was concerned with correctional colonies) is to demonstrate that the ill-treatment of persons imprisoned or detained in Ukraine, and poor conditions of detention within Ukrainian places of detention, are problems which not confined to any particular type of detention facility or prison establishment within that country. Rather, the ill-treatment of prisoners, and their maintenance in poor conditions of detention, is a systemic and pervasive problem that affects, to a greater or lesser extent, all prisons and detention facilities across the entire Ukrainian penal system.

In written submissions to the Court, counsel for the respondent particularly relied on the 2012 CPT report as, at that point in time, it contained the most up to date information. Moreover, he contended, it was the most relevant document, as it spoke to the treatment of prisoners, and conditions of detention, in several different correctional colonies spread across Ukraine. He has sought to highlight the salient parts of the 2012 CPT report for the assistance of the Court.

The Court is asked to note that the 2012 CPT report records that while the CPT delegation received a good level of cooperation from the central authorities in Ukraine, the level of cooperation received by them from staff on the ground at the various correctional colonies visited could at best be described as uneven (see para. 7 of the 2012 CPT report).

One colony, namely Stryzhavska Colony No. 81 *'attempted to discover what prisoners with whom the delegation had spoken had said. Further, penitentiary officers were said to have subsequently intimidated inmates interviewed, warning them to be careful in future about what they said to the delegation*.

*In Kharkiv region, the level of cooperation encountered was the poorest since the Committee's first visit to Ukraine in 1998. The delegation experienced long delays in gaining access to Kachanivska Correctional Colony No. 54 and Oleksiyivska Correctional Colony No. 25, notably due to the application of unprecedented, prolonged and grossly excessive security checks*.'

The report also noted that prisoners had allegedly been instructed by penitentiary staff or fellow inmates not to complain or even talk to the delegation. It is reported that *'failing to comply with these instructions would reportedly lead to punishment'*. Further, inmates indicated that they had been physically prevented from approaching the delegation.

It was further noted that inmates complained *'that they had been informed upon admission to Colony No. 25 that they were to be subjected to video- and audio surveillance during their stay in that establishment whereas the delegation was only informed of about video surveillance in disciplinary cells'*.

The 2012 CPT stressed that *'actions of the kind described in this paragraph (i.e., para. 7) are in clear violation of various provisions of the convention'*.

It also noted at para. 8 of the 2012 CPT report that:

> *'In the colonies visited, in particular in Correctional Colonies Nos. 25 and 81, the overall atmosphere was tense and a climate of fear was evident during the visit. Many inmates interviewed expressed fears about retaliatory action by staff and /or inmates assisting staff after the visit. …*
>
> *At the end of the visit, the delegation expressed its serious concerns as to the safety of the inmates it had spoken to and requested that urgent measures be taken at the highest level to prevent any intimidatory or retaliatory action against those inmates, including through a clear message to all penitentiary staff that any such action would be severely punished.*
>
> *In a letter of 18 January 2013, the Ukrainian authorities indicated that, with a view to ensuring the safety of inmates interviewed by the delegation, the attention of all penitentiary staff had been drawn to the newly-adopted ethical standards.*
>
> *At the same time, the Committee was informed that, in the context of the inquiries referred to in paragraphs 11 and 35, the prosecuting authorities did not find any evidence of prior instructions given to inmates not to complain or threats of retaliatory action against those who had complained to the delegation in the establishments visited. This does not dispel the CPT's concerns.'*

The Committee, even after its visit in 2012, continued to receive reports of intimidatory action (including death threats) by penitentiary staff against inmates, in connection with their interview with the delegation and subsequent inquiries conducted in these establishments after the visit.

The Committee further stated that:

> *'The Committee is far from convinced that the Ukrainian Authorities have taken the necessary steps to prevent such*

*action. Consequently, it has decided to open the procedure under Article 10, paragraph 2, of the Convention in relation to this matter.' (emphasis as in original)*

The procedure cited allows the CPT to make a public statement on the matter.

Counsel for the respondent has submitted that it is clear from the lack of cooperation received by the CPT during its visitation of these correctional colonies that there is a systematic cover up in relation to the manner and style in which these colonies/prisons are operated in Ukraine.

Counsel for the respondent has also drawn the court's attention to para. 9 of the 2012 CPT report where it is stated that:

> *'Concerns have already been expressed, in previous visit reports, about the treatment of prisoners serving sentences in some correctional colonies, and the Committee made a number of recommendations to address this problem. Encouraging developments in this regard were observed at Dnipropetrovsk Correctional Colony No. 89. However, this is overshadowed by the information gathered in other colonies visited where the phenomenon of ill-treatment of prisoners remains a serious issue.'*

In elaboration of this general statement the 2012 CPT report notes at para. 14 that the delegation received:

> *'….several credible accounts of beating by penitentiary operational officers and senior members of staff as well as other inmates at the instigation of staff, in particular in the hospital at Colony No. 89. The ill-treatment alleged generally consisted of punches, kicks and/or baton blows. In a number of cases the delegation's medical members observed signs of injuries consistent with the allegations made by the inmates in question.'*

The report records at para. 15 that in *Kharkiv* region the delegation had difficulties in assessing the credibility of statements made by inmates who praised the staff's attitude, considering the instructions given by penitentiary officers or inmates assisting staff not to complain to the delegation. That having been said, the delegation gained the overall impression that the treatment of inmates was not a major concern at Correctional Colony No. 54 in *Kharkiv*.

At para. 16 the 2012 CPT report continues:

> *'However, the situation of sentenced prisoners held at Correctional Colony No. 25 in Kharkiv is a source of grave concern to the CPT.'*

The delegation had noted that:

> *'… ill-treatment of male prisoners by staff or by those inmates with a designated role to assist penitentiary personnel was far from uncommon.'*

The delegation had received reports of ill-treatment of such severity that:

> *'… it could be considered as amounting to torture, (e.g. extensive beatings often combined with the dousing of inmates with pressurised water from a fire pump or while being tightly restrained in a straight- jacket; submersion of the head in water to the point of suffocation; application of handcuffs which were subsequently hit with a hammer to force them up the forearms; sexual assault at the instigation of staff).'*

Para. 17 of the 2012 CPT report reports that, in Vinnytsia Region, the Delegation found that prisoners at Correctional Colony No. 81 in Stryzhavka:

> *'… were routinely physically ill-treated by operational and internal security staff, including senior officials, and / or co-inmates at the instigation of staff ( in particular inmates assisting penitentiary personnel). The alleged ill-treatment consisted of punches, kicks, blows with wooden sticks wrapped in paper/ cling film or a wooden cooking paddle inflicted in the offices of operational officers within the colony's administrative building, beatings by staff in offices located in check point No. 2 (KKP 2) or beatings by staff or prisoners assisting penitentiary personnel in the admission unit. In some cases, the alleged ill-treatment was of such severity that it could be qualified as torture (e.g. extensive beatings, prolonged handcuffing in painful positions, dousing of inmates with pressurised water while being kept outdoors for long periods during the winter season).*
>
> *The delegation was inundated with graphic accounts, from inmates interviewed separately, of handcuffing to a metal barrier for days on end in KPP 2 (in the area referred to as the "monkey pen", in front of the duty office), and of having to eat food placed on a bowl on the floor while handcuffed ("like a dog", as several prisoners met by the delegation put it), the inmates concerned also being denied access to a toilet. It also received many accounts of placement in solitary confinement for up to several days while (tightly) handcuffed in one of the small holding rooms located in the basement of the establishment's hospital.*
>
> *In a few cases, reference was also made to the excessive use of force employed by "in-house special-purpose forces" after inmates refused to undergo strip searches in corridors.'*

The report notes that the delegation made medical observations and found other evidence consistent with the allegations received. It also took pictures of objects which were found near to the offices of operational officers and fully matched the descriptions given by the inmates interviewed. An explanation given by the colony's management that these items had solely been used as stakes for plants was found to be not convincing.

The 2012 CPT report goes on to state (at para. 18) that the delegation gained the impression in Correctional Colonies Nos. 25 and 81 that the ill-treatment of inmates had become an almost accepted feature of keeping good order and combating prison subcultures. It continued:

> *'The means employed by staff, partly relying on a select group of inmates having a designated role to assist them, were apparently aimed at obtaining submissive behaviour from all inmates as from the first days after their admission. The admission period was thus said to be a particularly traumatising experience. Prisoners were allegedly forced to exercise physically beyond the point of exhaustion, whatever their state of health, and subjected to various provocations by staff*

*(e.g. prisoners made to clean the floor or the toilets after prison officers made them dirty). Inmates refusing to or being unable to comply with the "daily regime" were said to be subjected to the treatment described in paragraphs 16 and 17. Those identified by staff as likely to cause trouble in prison remained at heightened risk of being subjected to physical ill-treatment by staff and/or by inmates assisting penitentiary personnel during their entire stay in these colonies.*

*Of particular concern were accounts from several inmates according to which they had been instructed by staff to assault or put undue pressure on other inmates. These prisoners had allegedly been under threat, in the event of refusal to comply with the staff's instructions, of losing any chances of conditional release, of being left unprotected from assault by inmates who may wish to cause them harm and/or beatings by staff. In one such case, the inmate in question allegedly had a prior arrangement with members of staff to assault another inmate in exchange for his transfer to another penitentiary establishment.'*

The CPT notes in its report, and has welcomed, the adoption and promulgation by the Ukrainian authorities, on 19 December 2012 (nine days after the CPT delegation had left Ukraine), of a new Code of Ethics for Penitentiary Staff, taking into account the principles set out in the European Code of Ethics for Prison Staff. The new code contains provisions on the obligations of staff, including operational officers, not to tolerate, under any circumstances, acts of torture and other forms of ill-treatment of prisoners. Further, the report notes that the Ukrainian authorities provided the CPT with a list of measures aimed at reinforcing the legal protection of sentenced and remand prisoners, which was adopted on 25th December,2012. These measures include awareness-raising campaigns on international standards on the appropriate treatment of prisoners.

Despite this, counsel has urged upon this Court that, whatever about stated commitment to necessary change at governmental level within Ukraine, there is no basis for confidence that there has yet been, or that in the short to medium term there will be, any significant cultural change at operational level across the Ukrainian prison system, in terms of how prisoners should be treated. The evidence concerning the mistreatment of prisoners who had complained to the CPT in the aftermath of the delegation's visit suggests a lack of commitment in that regard. Moreover, the failure of the Ukrainian authorities in their post inspection investigations to substantiate any of the numerous allegations of ill-treatment passed on to them by the CPT delegation, only justifies pessimism in regard to early meaningful change. (Further reference will be made to this investigation later in this judgment).

Counsel has urged that the CPT's findings with respect to staff-inmate relations represents depressing reading overall and further grounds for pessimism as to the commitment by front line staff in the Ukrainian prison system to meaningful change. At para. 22 the 2012 CPT report notes that:

*'Some penitentiary officials met during the 2012 visit considered that action to combat ill-treatment in correctional colonies should go hand-in-hand with a significant change in the current relations between staff and the prisoners. It appeared that attempts were being made by staff to engage with various categories of inmate at Correctional Colony No. 89, including in the maximum-security unit (e.g. "staff started to talk to us and to treat us like human beings", as was underlined by some inmates).*

*At the same time, the delegation could observe by itself during the visit that staff-inmate interaction was most often limited to the strict minimum and the approach of staff could even be described as militaristic. First-line penitentiary staff only spoke to prisoners to issue orders; they rarely sought a constructive dialogue with them. Inmates were obliged to stand to attention when in direct contact with staff or, as far as prisoners assisting staff were concerned, to report in a subaltern way. This approach was particularly visible at Colony No. 25 in Kharkiv where the management was of the view that military-like discipline was good for the inmates and illustrated this by showing prisoners standing to attention under the rain in the courtyards, closing ranks shortly after staff orders and shouting "no" with one voice to the question put by staff as to whether they had any complaints.*

*In-depth knowledge of the inmate population was generally left to a small proportion of penitentiary officials and to prisoners who had a designated role to assist and report to penitentiary staff.*

*Not surprisingly, a number of inmates interviewed during the visit felt that the only means at their disposal to make themselves heard by penitentiary staff was to go on hunger strike or self harm.'*

In the CPT's view, the general approach to staff-inmate interaction required fundamental alteration, and detailed recommendations were made in regard to that in terms of training. Moreover, the point required to be made, and was made in specific terms, that:

*'The fact that staff members working in direct contact with inmates were generally carrying "special means" in a visible manner (e.g. rubber batons, handcuffs) was clearly not conducive to the establishment of positive staff-inmate relations.' (emphasis as in original)*

In addition, it was pointed out that:

*'… the practice of delegating authority to inmates with a designated role to assist them to keep control over the inmate population is an abrogation of the responsibility for order and security – which properly falls within the ambit of penitentiary staff – and exposes weaker prisoners to the risk of abuse by their fellow inmates.'*

In the CPT's view, staff-inmate relations should also be geared towards facilitating the social reintegration of prisoners, by providing them with the opportunity to use their time in prison positively. However, in most correctional colonies visited, staff-inmate relations were excessively oriented towards prisoner productivity. In this context, the report notes that:

*'at Colonies Nos. 25, 54 and 81, the delegation heard numerous complaints from inmates about staff or prisoners having a designated role to assist penitentiary personnel, putting undue pressure on them in order to make them work excessively long hours, irrespective of their state of health (e.g. up to 14 hours a day for up to seven days a week at Colony No. 25; more than 16 hours a day, with short breaks, and up to seven days a week at Colony No. 54 for women; on occasion, up to two or three eight-hour shifts in a row at Colony No. 81). Inmates interviewed indicated that they had been made to sign a written consent to work extra hours, without this being properly recorded and often without payment. This partly related to the inmates' inability to reach their productivity targets, which were considered unrealistic by many prisoners.'*

At paragraph 27, the 2012 CPT report noted that notwithstanding anti-corruption measures implemented by the Ukrainian authorities following the CPT's 2009 visit, the 2012 delegation continued to receive allegations of corrupt practices by penitentiary officials e.g.,

the extortion of money from prisoners "*to facilitate conditional release*".

At paragraph 28, the 2012 CPT report noted that on many occasions it had highlighted the important contribution which health-care staff working in penitentiary establishments can make to the prevention of ill-treatment during imprisonment. It noted new instructions dating from May 2012, by the Ukrainian authorities in responding to concerns raised by the CPT following their delegation's December 2012 visit, obliging health-care staff, whenever a prisoner displays injuries on examination, to draw up a report containing a detailed description of the injuries in question, including their size and location. The report comments (at para. 29) that:

> *'These are positive developments. However, little or no progress has been observed in practice in correctional colonies. Many prisoners complained that access to health-care staff had been delayed or denied after having been allegedly ill-treated. When inmates did have access to a health-care professional, medical confidentiality was often not respected (e.g. a member of non-medical staff being present in the room), injuries indicative of ill-treatment were reportedly not recorded and statements made by inmates ignored. The delegation's interviews with health-care staff members gave credence to these allegations; in the course of the visit, some members of the health-care personnel explained that there was a heavy pressure put upon them from the colonies' management not to record injuries and fulfil their duties. It is also of concern that operational staff apparently had access to medical findings/statements made by the inmates during medical examinations.*
>
> *The examination of the medical documentation also revealed that descriptions were often superficial. In some instances, it became evident that health-care staff deliberately recorded misleading information (e.g. self-inflicted injuries).'*

Damningly, the report concludes (at para. 30):

> *'In the CPT's view, the current inaction of health-care staff is aiding and abetting the ill-treatment of prisoners in the correctional colonies.'*

As already alluded to, counsel for the respondent has also drawn the Court's attention to, and places considerable reliance upon, the following matters recorded at paras. 34 to 36 inclusive of the 2012 CPT report:

> *'34. As indicated in paragraph 10, the CPT's delegation made an immediate observation in accordance with Article 8, paragraph 5, of the Convention and requested that the prosecuting authorities carry out without delay, at the national level, an effective investigation into the treatment of prisoners by staff in Oleksiyivska Correctional Colony No. 25 in Kharkiv and Stryzhavska Correctional Colony No. 81.*
>
> *In this connection, the delegation highlighted that prosecutors apparently faced a lack of trust from prisoners in these two colonies. The majority of inmates interviewed did not perceive local prosecuting authorities as impartial and considered that complaining to them would serve no purpose or might even have negative consequences for them.*
>
> *35. In their letter of 18 January 2013, the Ukrainian authorities informed the CPT that the prosecuting authorities had conducted an inquiry into the treatment of prisoners in the four colonies visited, together with representatives of other monitoring bodies, the civil society and health authorities. Almost all prisoners accommodated in these colonies were consulted within the framework of a written inquiry. About 700 inmates held at Colonies Nos. 25 and 81 were heard together with members of monitoring bodies and of the civil society. Further, at Colony No. 25, nearly 100 inmates were examined by a forensic medical doctor. The situation of prisoners held in the colonies visited was also examined by a commission of the State Penitentiary Service, comprising outside partners, from 13 to 19 December 2012.*
>
> *The Ukrainian authorities affirm that no evidence of recent ill-treatment of inmates was found in the colonies visited: no complaints of ill-treatment were received from the inmates consulted, no injuries were observed on the prisoners subjected to a forensic medical examination at Colony No. 25 in Kharkiv, no medical or other evidence was found in the medical documentation at Colonies Nos. 25 and 81 and no violations had emerged upon the examination of the registers on the use of force, "special means" and straight-jackets. At the same time, the commission of the State Penitentiary Service received, at Colony No. 81, complaints of "untactful treatment" and threats of use of force by staff members who were no longer working in the establishment.*
>
> *36. The CPT welcomes the promptness of the Ukrainian authorities' reaction to the delegation's immediate observation. It also appreciates the efforts made to include representatives of the civil society and outside bodies in the process. However, all the indications are that the investigation failed to meet the criterion of thoroughness.' (emphasis as in original)*

The CPT then proceeded to identify specific deficiencies in the investigative process, and a general lack of rigour in the investigation, and the report goes on to recommend that the investigation be re-opened.

The 2012 CPT report also deals with the situation of women and men sentenced to life imprisonment in Ukraine; the application of disciplinary and segregative measures within the Ukrainian penal system; health care provided to prisoners suffering from tuberculosis at the hospital of Correctional Colony No. 89 in Dnipropetrovsk; and the specific situation of Yulia Tymoshenko at Central Clinical Hospital No. 5 in Kharkiv. It is not necessary to review most of this for the purposes of this judgment. However, some reference should be made to the section concerning the application of disciplinary and segregative measures within the Ukrainian penal system as the respondent places some reliance upon it.

At para. 55 of the report the CPT notes that:

> *'…Ukrainian legislation offers a variety of disciplinary/segregative responses to prisoners' conduct likely to constitute or constituting a threat to good order, safety or security. The most severe responses of this type at the disposal of the penitentiary authorities range from confinement in a "disciplinary isolator" (DIZO) for up to 15 days (10 days for women) to segregation for preventative purposes in "cell-type premises" (PKT) for up to three months or in an "enhanced control unit" (DPK) for a renewable period of three months. The penitentiary authorities also have the possibility to transfer an inmate to a correctional colony/unit with a higher security level*
>
> *.*
>
> *Nevertheless, the margin of manoeuvre of the penitentiary authorities is unduly restricted by law. Several categories of*

*inmate are automatically held in conditions of maximum security and placed on segregation for preventative purposes for a prolonged period following a court sentence, on the sole basis of their crimes. The CPT must recall its position of principle that decisions concerning the security level to be applied to a given prisoner as well as the measure of segregation for preventative purposes should not be pronounced – or imposed at the discretion of the court – as part of the sentence. The decision whether or not to impose a particular security level or whether segregation for preventative purposes is necessary should lie with the penitentiary authorities, on the basis of an individual risk assessment, and should not be part of the catalogue of criminal sanctions.* ***The Committee reiterates its recommendation that the relevant legal provisions be amended accordingly****.' (emphasis as in original)*

The report then goes on (at para. 56) to describe the delegation's findings with respect to how disciplinary and segregative measures were being applied in practice in the institutions visited during their December 2012 visit. It records that:

*'It emerged from the delegation's findings during the 2012 visit that the relevant penitentiary authorities had generally resorted in a reasonable way to the measures of disciplinary confinement or administrative segregation at Correctional Colonies Nos. 54 and 89.*

*In contrast, recourse to disciplinary confinement and/or administrative segregation for preventative purposes appeared to be excessive at Correctional Colonies Nos. 25 and 81. The delegation noted that there were 651 placements in DIZO and 91 placements in PKT in the first eleven months of 2012 at Colony No. 25 as well as 369 placements in DIZO and 50 placements in PKT for the same period at Colony No. 81. The examination of registers in both establishments revealed instances of repeated placements in DIZO for consecutive periods of disciplinary confinement of up to 30 days without a break in-between. The measures of disciplinary confinement or segregation (PKT) were often applied to inmates in reaction to petty offences (e.g. 10 days of disciplinary confinement for "not going to sleep on time"). In a number of cases, the imposition of a disciplinary sanction or the application of a measure of segregation clearly appeared to be unjustified (e.g. 15 days of disciplinary confinement or placement in PKT for three months for having "refused to take outdoor exercise"; 15 days of disciplinary confinement for having "expressed dissatisfaction about conditions of detention").*

*Further, it emerged from the examination of records on placements in DPK that the reasoning for decisions on placement and its prolongation appeared to be stereotyped and repetitive (e.g. "no readiness to exercise self-control and adopt the appropriate behaviour").*

*As a result, some prisoners were kept in DIZO, PKT and/or DPK for long periods (e.g. more than a year in total) with the firm belief that the application of these measures was not guided by the requirements of security, safety and discipline but aimed at unduly restricting their rights.*

*These findings are of all the more concern that it was not uncommon for the prosecuting authorities to initiate criminal proceedings against the inmates concerned on the account of these offences and to obtain from courts an extension of the prisoners' sentences (for a term of up to three years) by virtue of Section 391 of the Criminal Code (persistent disobedience).'*

Counsel has submitted that in the light of these matters, and taking all of the information before the Court into account, there are at this time substantial grounds for believing that prisoners detained in Ukraine, and particularly those in Ukrainian correctional colonies, are at real risk of being subjected to torture or inhuman or degrading treatment.

**Recent further report of the CPT**

Since reserving judgment in this matter, the Court's attention has been drawn to a further CPT report, namely the Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, from 9 to 21 October 2013, and published at Strasbourg, on 29 April 2014 (hereinafter "the 2013 CPT Report").

The Court has read and considered the contents of this document.

The objectives of the 2013 visit by the CPT's delegation were to re-examine the situation of persons held by law enforcement officials as well as that of remand prisoners, in particular in the light of the provisions of the new Code of Criminal Procedure (CCP) which entered into force in November 2012. Further, they wished to review the treatment of sentenced prisoners at Correctional Colony No. 81 in Stryzhavka in light of the fact that during its previous visit to this establishment in December 2012, the CPT had found that the ill-treatment of inmates was a common practice. Further, the delegation carried out for the first time a visit to Closed-Type Prison No. 3 in Krivyi Rih, which held various categories of inmate, including remand prisoners.

The 2013 CPT report discloses a somewhat improved level of co-operation aimed at facilitating the work of the visiting delegation, compared to that reported in the 2012 CPT report. Nevertheless, improved co-operation was not experienced across the board. Moreover, the significant concerns remain, particularly with respect to the recurrent issue of intimidatory or retaliatory action against prisoners prior to, during and after CPT visits. The 2013 CPT report records (at paras. 9 to 13):

*'The CPT notes that the delegation hardly came across any cases of intimidation of inmates prior to/during the 2013 visits to Kyiv and Simferopol SIZOs and to Vinnytsia Prison No. 1. However, the same cannot be said of the Dnipropetrovsk and Odessa SIZOs where inmates had apparently been strongly advised, by staff (at Dnipropetrovsk) or by prisoners belonging to an informal prisoner hierarchy (at Odessa), not to complain to the delegation.*

*Although the overall atmosphere at Stryzhavska Correctional Colony No. 81 was rather relaxed when compared to the situation observed in 2012, some inmates had allegedly been threatened with disciplinary action by staff or physical ill-treatment by fellow inmates in this establishment or after transfer to another penitentiary establishment, should they complain to the delegation during the 2013 visit.*

*The situation was of even greater concern at Krivyi Rih, where the delegation found a palpable climate of fear and intimidation. Inmates interviewed feared for their own safety and were extremely reluctant to speak openly about the manner in which they had been treated; prisoners who had a designated role to assist staff (in particular so-called 'pressovshchiki') apparently made clear to them shortly before the delegation's visit to this establishment that anyone who complained would face serious consequences, including (further) beating.*

*10. At the end of the 2013 visit, the CPT's delegation alerted the Ukrainian authorities that prisoners interviewed in both of the last-mentioned establishments ran a real risk of being subjected to reprisals. It immediately received assurances from the Ministry of Justice, the State Penitentiary Service and the Prosecution Service that prompt action would be taken to prevent any such acts against prisoners in the penitentiary establishments concerned. The delegation requested that it be provided with a detailed account of steps taken in this respect.*

*In a letter of 27 December 2013, the Ukrainian authorities indicated that the prosecuting authorities had conducted inquiries into possible acts of reprisals and considered that no such action had taken place. They emphasised that representatives of civil society were also involved and that anonymous questionnaires were used in the context of these inquiries.*

*11. In the light of the delegation's findings during the 2013 visit, the CPT deeply deplores that the Ukrainian authorities did not take all the necessary measures to prevent any intimidation of prisoners by staff or fellow inmates at the instigation of staff in several of the penitentiary establishments visited. Any such behaviour is an assault on the principle The CPT appreciates that the relevant authorities took the delegation's findings on intimidation of inmates seriously and conducted inquiries shortly after the delegation's visit. At the same time, the CPT knows from previous experience that the steps described by the Ukrainian authorities in their letter of 27 December 2013 are in themselves not sufficient to allay its concerns in relation to this matter. Gaining a sufficient level of trust among prisoners remains a key issue for such inquiries to be considered as effective. Regrettably, it does not transpire from the details provided to the Committee that a climate of trust was created during these inquiries. It appears that inmates did not share their concerns about tangible threats of sanctions and fears for their safety. The Committee must stress again the need for prosecutors/monitors to take measures to counter the risk of intimidation of inmates by staff or fellow prisoners, at the instigation of staff, prior to/in the course of inquiries of this kind; the use of anonymous questionnaires, for instance, is of dubious value if nothing has been done to counter that risk. Further, prosecutors/monitors should seek private interviews with prisoners. This should imply in particular that prosecutors/monitors systematically enter into direct contact with inmates and interview them in private; from the information at the disposal of the Committee, this does not appear to have always been the case.*

*Further, of particular concern are the clear indications received during the 2013 visit according to which, shortly after the previous visit in 2012, attempts had been made by the management of Correctional Colonies Nos. 25 and 81 to identify all the prisoners who had complained to delegation members (with the help of operational staff and/or fellow inmates), to make sure that these prisoners would not make similar complaints to prosecutors/investigators/monitors in the course of subsequent inquiries/inspections and, as regards Correctional Colony No. 25, to subject them to corporal punishment.*

*12. A CPT delegation returned to Prison No. 3 in Krivyi Rih in the context of the ad hoc visit to Ukraine in February 2014. It noted that several inspections (by the general and regional prosecution services, as well as by the regional prison administration) had been carried out to the establishment after the CPT's 2013 visit, and that the director and some of his deputies were facing disciplinary proceedings.*

*The delegation gained the impression that the overall atmosphere in the prison had somewhat improved, and that inmates were less intimidated than during the previous visit in October 2013. Some of the prisoners told the delegation that the confession and/or money extortion system (previously organised by the operational staff and using the so-called 'pressovshchiki') was no longer in operation (or at least was applied on a much smaller scale); that said, prisoners were still afraid, in particular as most of the staff concerned (and some of the 'pressovshchiki') remained present in the establishment. Among others, inmates complained that the former deputy director (responsible for operational activities) who had reportedly organised the extortion system, although no longer working in the establishment, had been promoted to the regional prison administration (where he was responsible for security matters) and was now regularly inspecting the prison and entering into contact with the inmates who had allegedly been victims of ill-treatment/extortion. It is also noteworthy that prisoners complained to the delegation that, following the CPT's 2013 visit, they had been pressurised by operational staff to make false statements on the origins of their injuries (i.e. to declare that they had resulted from accidents, while in reality they had been inflicted by fellow prisoners).*

*Furthermore, the delegation found that there had been no improvement as regards the recording and reporting of injuries observed on prisoners by health-care staff, and with respect to the confidentiality of medical examinations and documentation (see also paragraphs 152-154).*

*13. In the light of the information at its disposal, the CPT is certainly not convinced that all the necessary steps have so far been taken to stamp out – once and for all – the practices described in paragraph 11; consequently, the Committee has decided to keep open the procedure under Article 10, paragraph 2, of the Convention.'*

Fair comment requires it to be noted that in Part B of the 2013 CPT report, concerning the treatment of persons in pre-trial detention or serving sentences, the CPT was pleased to report improvements concerning the manner in which inmates were being treated in some SIZOs, notably those in Kyiv and Simferopol. However in others, notably those in Odessa and Dnipropetrovsk there continued to be problems with prisoner ill-treatment.

In particular, it was reported (at para. 105) that in Dnipropetrovsk SIZO:

*'…the delegation heard a few accounts of severe beatings of male inmates who were or had been held in that establishment. In most cases, the alleged ill-treatment was said to have been inflicted by fellow prisoners at the instigation of the establishment's operational staff. More specifically, the inmates concerned had apparently been allocated to "press-khata" cells where a couple of other prisoners were allegedly tasked with beating them until they provided self-incriminating statements or statements incriminating others in relation to criminal offences presumed to have been committed before their apprehension.[95] In at least one case, the alleged ill-treatment was of such severity that it could well amount to torture (e.g. extensive beatings for some 24 hours whilst being tied up with adhesive tape; asphyxiation with a plastic bag; strangulation with a rope to the point of losing consciousness).'*

The 2013 CPT report records that the situation with respect to the treatment of prisoners in Correctional Colony No. 81 in Stryzhavka was much improved, compared with that which had been noted during the 2012 visit. The 2013 CPT report records (at para. 111) that:

*'… the delegation observed a marked improvement in the treatment of prisoners. The majority of inmates interviewed indicated that there had been a radical change in the attitude of staff towards them. This was also confirmed by interviews with penitentiary operational officers and prisoners who had previously been designated to assist staff; the methods used until December 2012 were rejected. It became evident that action taken at the highest level by the penitentiary and prosecuting authorities, but also action taken at local level, had played a major role in changing the situation of inmates for the better.*

*However, it would appear that this positive development was overshadowed by the acting management's initiative to partly delegate the task of keeping good order to a group of inmates which operated in many respects as a criminal subculture but was somehow subordinated to the local penitentiary administration.*

*As a result, a climate of tension seems to have been introduced, which had allegedly resulted in sporadic physical ill-treatment of prisoners by fellow inmates at the instigation of staff or, in a few cases, by members of staff themselves (including senior officials). In this connection, the delegation also received several allegations according to which those not willing to give informal financial or other contributions (through their jobs in the workshops in particular) in exchange for protection were at heightened risk of intimidation/ill-treatment.'*

Regrettably, the same overall positivity was not capable of being expressed with respect to Prison No. 3 in Krivyi Rih. The report states (at para. 113):

*'The situation observed at Prison No. 3 in Krivyi Rih is of grave concern to the CPT.*

*The delegation heard numerous allegations and gathered other evidence (including of a medical nature) that the establishment's operational staff used a group of inmates (so-called "pressovshchiki") to physically ill-treat other prisoners and consequently install a climate of fear and intimidation. In some instances, the alleged ill-treatment was of such severity that it could be considered as torture (e.g. deprivation of sleep for up to several days; extensive beatings whilst being tied up with adhesive tape, suspended or after having being placed in a bag).*

*The purpose of this ill-treatment was apparently not only to maintain strict order and discipline, but also to obtain from the inmates concerned confessions to (additional) crimes they were suspected of having committed before imprisonment. In this context, a few prisoners also alleged that the "pressovshchiki" had ill-treated them in order to extort money from them and their relatives.*

*Further, the establishment's health-care staff, by neither recording nor reporting clearly visible serious injuries sustained within the establishment (see paragraph 155), were facilitating the ill-treatment of prisoners.*

*In this context, it is also noteworthy that there were numerous registered acts of self-harm in the prison. The delegation spoke with several inmates who had committed such acts recently, and at least some of them acknowledged that the reason for self-harming had been that they could no longer bear the ill-treatment and intimidation by other prisoners, and had hoped that by committing self-harm they would (at least for some time) be taken to the relative safety of the health-care unit.'*

At the end of the 2013 periodic visit, the CPT's delegation invoked article 8, paragraph 5, of the Convention and made an immediate observation in respect of Prison No. 3 in Krivyi Rih. The delegation requested that an immediate, thorough and independent inquiry be carried out into the manner in which this establishment was operating. The Ukranian authorities wrote to the CPT on 27th December, 2013, listing a number of steps taken. While noting the steps said to have been taken by the Ukrainian authorities the 2013 CPT report comments (at para. 115):

*'…the Committee cannot escape the impression that the steps taken so far have fallen short of what was requested by the Committee in the immediate observation referred to ...'*

Commenting with particular reference to the Ukrainian authorities investigation of possible prisoner ill-treatment and inter prisoner violence and intimidation, the 2013 CPT report also states (at para. 115):

*'It is quite clear that the approach chosen by the Ukrainian authorities has not been conducive to the generation of a climate of trust amongst the inmates, as witnessed by their apparent refusal to confirm the allegations made to the CPT's delegation (which, as already stressed above, were at least partially confirmed by objective medical evidence).'*

The 2013 CPT report further records (at para. 117) that:

*'… one of the main apparent purposes of ill-treatment and intimidation of inmates at Prison No. 3 in Krivyi Rih was for the operational staff to obtain confessions (and other information) concerning offences allegedly committed by prisoners prior to their incarceration. Management and staff in the establishment seemed to consider that they formed part of a single law enforcement system (together with the Internal Affairs, other law enforcement agencies and the prosecution service), the task of which was to detect and fight crime.*

*In the CPT's view, it is to say the least a highly questionable state of affairs that prison officers are involved in the investigation of criminal offences – and the collection of related evidence such as confessions of prisoners – in particular, when the offence in question has been committed prior to imprisonment. Such a situation is clearly detrimental to the protection of prisoners against ill-treatment (including inter-prisoner violence) and lends itself to abuse.'*

The CPT's delegation also paid follow-up visits during October 2013 to Kyiv, Dnipropetrovsk, Odessa and Simferopol SIZOs, where remand prisoners/inmates not yet serving their sentences represented about 90% or more of the whole prison population in these establishments. In examining the conditions of detention of the prisoners in those SIZOs the delegation considered the issues of overcrowding, material conditions, outdoor exercise, activity programs and prisoners' contact with the outside world. While it noted the eradication of massive severe overcrowding in the establishments visited, the delegation concluded nevertheless that overcrowding remains an issue for many inmates who still enjoy an extremely limited amount of living space (i.e. far lower than 4 m² per inmate) in cells which were often found to be in a poor condition. In addition, the bulk of remand prisoners were confined to such cells for at least 23 hours a day, with no meaningful out-of-cell activities on offer and little incentive to take daily outdoor exercise. In addition, few of them had opportunities to maintain contacts with their relatives. In the CPT's view (at para. 126):

*'…the cumulative effect of these conditions and restrictions could well be considered, for many inmates, as a form of inhuman and degrading treatment.'*

**The Article 3 Issue**

The Law

In *Attorney General v. O'Gara* [2012] IEHC 179 (Unreported, High Court, Edwards J., 1st May, 2012) this Court held a presumption does arise in extradition cases that the other country will act in good faith and that it will respect a proposed extraditee's fundamental rights, but that this presumption is weaker and more easily rebutted than the corresponding statutory presumption that arises under the European Arrest Warrant Acts 2003 - 2012. In particular, this Court stated in *O'Gara* (at para. 10.3):

> "10.3 In the Court's view the true position with respect to a presumption lies in between the parties respective positions. The Court considers that a default presumption does arise in extradition cases that the other country will act in good faith and that it will respect a proposed extraditee's fundamental rights. As Fennelly J. has pointed out in Stapleton the making of bilateral extraction arrangements implies at least some level of mutual political trust and, at the judicial level, confidence in the legal systems of the co-operating states. However, in conventional extradition cases the presumption is much weaker and is much more easily rebutted than is the presumption that arises under the European arrest warrant system. This is because the whole European arrest warrant system is built and predicated upon the notions of mutual trust and confidence between member states, and mutual recognition of judicial decisions, and there is a continuing and ongoing commitment to abide by these principles as expressed in the recitals to the Framework Decision, including recital 12 thereto which expressly states that the Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union. Moreover, though it is by no means perfect, there is, by virtue of the fact that all member states operating the European arrest warrant system are signatories to the Convention, a greater common understanding between the States operating the European arrest warrant system of what constitutes an individual's fundamental rights, and what is required to be done to defend and vindicate those rights. Such is the level of mutual trust and confidence in other member states who are parties to the European arrest warrant system that the Oireachtas has given statutory effect to the presumption that arises - in s.4A of the European Arrest Warrant Act 2003(as inserted by s.69 of the Criminal Justice (Terrorist Offences) Act 2005). S.4A provides that *"It shall be presumed that an issuing state will comply with the requirements of the Framework Decision, unless the contrary is shown*." Neither the Extradition Act 1965, nor the Washington Treaty, contains a comparable provision. That is not to say that no presumption at all arises, but as the Court has stated it is very much weaker and more easily rebutted than is the case under the European arrest warrant system. Furthermore, it needs to be emphasised that rebuttal of the presumption does not of itself establish the existence of a real risk. It merely means that the Court is put on enquiry as to whether there is a real risk."

Ireland had sufficient trust and confidence in Ukraine to enter into extradition arrangements with that State. Moreover, and unlike the USA which was the requesting country in *O'Gara*, Ukraine has both signed and ratified the European Convention on Human Rights. The Court must therefore approach the present case from a starting position that it is to be presumed that Ukraine will respect the respondent's rights. However, that presumption may be rebutted by the adduction of cogent evidence tending to suggest that that which is presumed is not in fact the case. Moreover, the degree of such evidence required to rebut the presumption will be less than would be required if this were a European arrest warrant case.

As regards the substantive issue, it is accepted by both sides that the law is as laid down by the Supreme Court in *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] 3 IR 783, suitably adapted to the extradition context. I have previously attempted in my judgment in *Minister for Justice, Equality and Law Reform v. Mazurek* [2011] IEHC 204 (Unreported, High Court, Edwards J., 13th May, 2011) to distil the applicable principles from the various judgments in *Rettinger*. It seems to me that, in so far as they must apply to the present case, those principles can, with appropriate modifications, 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*", neither the objectives of a system of rendition, nor of any extradition treaty (the European Convention on Extradition 1957, with which we are concerned in this case, is a multilateral extradition treaty) can be invoked to defeat an established real risk of ill-treatment contrary to article 3. (paraphrasing the remarks of Fennelly J. at para. 71 of his judgment in *Rettinger*);
>
> - The subject matter of the court's enquiry "is the level of danger to which the person is exposed." (per Fennelly J. at p.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 p.814 in *Rettinger*) "in a rigorous examination." (per Denham J. at p.801 in *Rettinger*). However, the mere possibility of ill treatment is not sufficient to establish an applicant's case. (per Denham J. at p.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 p.801 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 extradited he would be exposed to a real risk of being subjected to treatment contrary to article 3 of the Convention." (per Denham J. at p.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 [a respondent] 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 [a respondent] 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 p.802 in *Rettinger*);

- "[T]he court should examine the foreseeable consequences of sending a person to the requesting State." (per Denham J. at p.802 in *Rettinger*). In other words the Court must be forward looking in its approach;

- "[T]he court may attach importance to reports of independent international human rights organisations." (per Denham J. at p.802 in *Rettinger*)

The Court's Decision

The country of origin information, considered as a whole, paints a grim picture of significantly substandard prison conditions, and regular serious ill treatment of prisoners, in all categories of places of detention, and all across Ukraine. It is correct to say that some institutions are worse than others. It is also appropriate to note that improvements in the physical housing conditions of prisoners have been observed in a number of institutions. Similarly, improvements in the regime and treatment of prisoners have been observed in some institutions. Nevertheless, the evidence suggests that, notwithstanding a commitment to change at central government level, and the observation of recent welcome improvements in the physical conditions of detention and treatment of prisoners in some places of detention, lack of respect for prisoners' rights, particularly amongst penitentiary staff, remains deeply endemic in a great many Ukrainian penal institutions. The sheer number of issues raised by the various agencies who have reported in recent years on Ukrainian prison conditions, including numerous instances where treatment amounting potentially to torture, or where physical conditions or a regime of confinement existed amounting potentially to inhuman or degrading treatment or punishment (either on the basis of single concerns or on the basis of a number of concerns cumulatively, or both), testifies to the lack of a rights based culture in Ukrainian prisons and places of detention.

The respondent's personal experience in pre-trial detention has also been taken into account. It only carries limited weight, in and of itself. This limitation derives from the fact that the respondent's said experience is not recent. In addition, it does not address specifically what he might face as a sentenced prisoner in a correctional colony if extradited. That having been said, his evidence is at least consistent with the typical picture of pre-trial detention conditions in police establishments and SIZO's at the time, as reported in reputable country of origin information. Moreover, as the deplorable conditions reported in respect of such places of detention were found to be in large measure replicated in correctional colonies according to the same reputable country of origin information, the respondent's personal experiences ought not to be entirely discounted as irrelevant. They are undoubtedly consistent with the overall picture, and as such will be afforded some, albeit limited, weight. However, this Court regards the country of origin evidence, particularly the 2012 and 2013 CPT reports, as much weightier evidence.

In a number of previous cases (mostly involving the European Arrest Warrant) this Court has expressed approval with certain sentiments expressed by Latham L.J. in *Miklis v. Deputy Prosecutor General of Lithuania* [2006] 4 All ER 808, cf., *Minister for Justice, Equality and Law Reform v. Machaczka* [2012] IEHC 434, (Unreported, High Court, Edwards J., 12th October, 2012); *Minister for Justice, Equality and Law Reform v. Holden* [2013] IEHC 62, (Unreported, High Court, Edwards J., 11th February, 2013); and *Minister for Justice, Equality and Law Reform v. McGuigan* [2013] IEHC 216, (Unreported, High Court, Edwards J., 16th April, 2013).

In *Miklis*, Latham L.J., was a member of a Divisional High Court involved in judicially reviewing a magistrate's decision to surrender the applicant in that case to Lithuania on foot of a European arrest warrant, notwithstanding an objection to surrender on the grounds that there would be a risk of violation of article 3 of the ECHR if the requested person was so surrendered, having regard to certain evidence before the court concerning poor conditions of detention and the ill-treatment of prisoners in Lithuanian prisons. In doing so the Court said at paragraph 11 of the judgment:-

> "The final point made in relation to the District Judge's decision in this respect is that he was unduly dismissive of these reports. [CPT reports and Amnesty International report]. There is no doubt but that he approached them with a degree of scepticism. That is not surprising bearing in mind the very general nature of the allegations that were made. That is not intended to belittle the reports. It is, however, important that reports which identify breaches of human rights, or other reprehensible activities on the part of Governments or public authorities are kept in context. The fact that human rights violations take place is not of itself evidence that a particular individual would be at risk of being subjected to those human rights violations in the country in question. That depends upon the extent to which the violations are systemic, their frequency and the extent to which the particular individual in question could be said to be specifically vulnerable by reason of a characteristic which would expose him to human rights abuse'.

While the evidence in the case before me does not establish that the respondent suffers from a particular vulnerability by reason of a characteristic which would expose him to human rights abuse, I nevertheless consider that the sheer volume of evidence before the Court concerning ill-treatment of prisoners, poor physical conditions of confinement, and the harshness of the regime across the Ukrainian penal system, readily serves to rebut any presumption that the requesting state will respect the respondent's rights under article 3 ECHR. The evidence provided by the Ukrainian authorities suggests that the respondent will be incarcerated, if returned, "*within the administrative-territorial unit according to his place of residence before conviction*." Before his conviction the respondent resided in the city of Lutsk in the Volyn region, which the Court is aware from within its own knowledge is close to the border between Ukraine and Poland and approximately 400km from the Ukrainian capital Kiev (or Kyiv). While the country of origin information relied on in this case does not deal specifically with any correctional colony in or near to Lutsk, or indeed within the Volyn region of Ukraine, there is nevertheless, in the Court's view, overwhelming evidence that human rights violations are rife and endemic, and also systemic because of a long standing culture of prisoner oppression within the penitentiary system, in places of detention of all types across Ukraine, including the type of correctional colony to which the respondent is likely to be sent in the event that he is extradited.

The fact that the presumption stands rebutted is not, however, dispositive of the matter. The Court must ask itself whether the concerns that have been raised in its mind by the evidence relied upon by the respondent have allayed, either by material identified and relied upon, or representations made, by the requesting state. In that regard, the Court has considered the specific representations made by the requesting state in these proceedings, and also the various published responses of the requesting state to reports criticising the Ukrainian prisons and penal system.

While the Court readily acknowledges that there is clear evidence that a commitment exists at central government level in Ukraine to addressing identified deficiencies in the Ukrainian prison system, and further acknowledges that some reforming legislation has been enacted, and also that some improvements and changes for the better have been observed on the ground in recent times (particularly by the CPT delegation during its October 2013 visit), the overwhelming picture is still one of widespread continuing active abuse of the fundamental rights of prisoners within the Ukrainian prison system. There is also equally strong evidence of passive abuse in the form of failures at various levels of officialdom, but particularly amongst prison staff, to safeguard and vindicate prisoner's fundamental rights, particularly their toleration and condonation of those features of prisoners' detention with the potential to amount to inhuman or degrading treatment or punishment, e.g., inaction by health staff, also the abrogation of responsibility for control and order within correctional colonies to designated inmates or "pressovshchiki".

In particular, this Court is heavily influenced by the CPT's persistent complaints that the Ukrainian authorities have failed to take

adequate steps to respond to, and address, serious deficiencies made known to them; the seemingly justified criticisms concerning superficiality and lack of rigour in the various investigations carried out by the Ukrainian authorities into allegations of torture and mistreatment, and the on-going problem of punishment, discrimination and ill-treatment of prisoners who dare to complain to outside agencies concerning their treatment, regime and physical conditions of detention. Faced with such evidence the Court can have no confidence, at least in the short term, that the commitment to necessary change which has been expressed at central government level in Ukraine, even if sincere and genuine, will be adequately reflected on the ground and implemented at the coalface in the Ukrainian prison system, such as to ensure that the respondent's fundamental rights, and in particular his article 3 rights, will be respected in the event that he is extradited. Regrettably, this Court's concerns have not been sufficiently allayed by the Ukrainian authorities' representations in this case, nor by their track record to date as appears from successive reports published by reputable independent international human rights organisations.

This Court is compelled to the conclusion, in circumstances where the presumption that the requesting state will respect the respondent's article 3 rights is prima facie rebutted on the evidence, and representations made by the requesting state have not served to allay the Court's concerns, that it has substantial grounds for believing that there is a real risk that the respondent's rights under article 3 of the European Convention on Human Rights will be breached, either by his subjection to ill-treatment as a prisoner amounting to torture, alternatively by his subjection to physical conditions of confinement and/or a prison regime amounting to inhuman or degrading treatment or punishment.

Although for all practical purposes the upholding of the article 3 objection disposes of the case, the Court should still, for completeness, proceed to rule on the other objections raised by the respondent.

**The Article 6 Issue**
The sole evidence adduced in support of the case based upon alleged historical breaches of article 6 ECHR is that contained in the respondent's affidavit, suggesting, as it does, that the police subjected him to beatings and coercion in an effort to secure admissions from him; that his conviction was based on coerced, induced and involuntary statements, and that in consequence of this he did not receive a fair trial.

In *Minister for Justice and Equality v. Rostas* [2014] IEHC 391 (Unreported, High Court, Edwards J., 1st July, 2014) this Court noted that the European Court of Human Rights has stated in *Othman (Abu Qatada) v. United Kingdom*, Application No. 8139/09, 17th January, 2012, that:

> (a) an issue might exceptionally be raised under article 6 by an expulsion or extradition decision in circumstances where the fugitive **had suffered or risked suffering** a flagrant denial of justice in the requesting country: para. 258;
>
> (b) the term "flagrant denial of justice" has been synonymous with a trial which is manifestly contrary to the provisions of article 6 or the principles embodied therein, and is "a stringent test of unfairness" which requires a breach of the article 6 fair trial guarantees which is "so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that article": paras 259 and 260;
>
> (c) in assessing whether this test has been met, the same standard and burden of proof should apply as in article 3 expulsion cases … ; para 261.

The evidence in this case does not remotely approach what would be required to establish that this respondent had received an unfair trial, and that he is the victim of a flagrant denial of justice. Indeed, apart from the respondent's personal assertions concerning his treatment at the hands of the police there is no evidence to support the notion that he received an unfair trial. The respondent has put no evidence whatsoever before the court concerning the trial process leading to his conviction. Specifically, the evidence is silent concerning whether the admissibility of the allegedly coerced confessional evidence could have been, and if so whether in fact it was, challenged at trial. Even in our own country it is alleged from time to time, and indeed it sometimes happens (although increasingly rarely), that the police have obtained involuntary admissions through the use of coercion or inducements. The fact that this sometimes occurs does not represent a fundamental defect in our system of justice. On the contrary justice is served by the fact that it is possible to challenge such evidence and have it ruled inadmissible if the evidence establishes that it was involuntary and procured by coercion or inducements.

Absent any evidence whatsoever from the respondent concerning the process of trial in which he was convicted, the Court is simply unable to engage with his suggestion that he received an unfair trial. He bears the evidential burden of adducing cogent evidence to establish that there are substantial grounds for believing that there is a real risk that he may have suffered an unfair trial. He has not discharged that burden on any view of the case. The Court therefore dismisses the article 6 objection.

**The Article 8 Issue**
The Court is also not disposed to uphold the objection based upon alleged interference with the right to respect for family life under article 8 ECHR. In considering this issue the Court has sought to apply the jurisprudence developed in 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. .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 wider family. It bears commenting that the respondent's affidavit contains relatively skimpy information concerning his family life and circumstances.

In conducting my said examination of the evidence I have concluded that I must approach the exercise upon the assumption that the respondent's trial was fair and that the conviction is accordingly sound. The offences are serious in themselves (although the quantities of drugs involved were not very large), and a very significant prison sentence was imposed. Approaching the matter in the way that I have indicated, it is clear that there is a substantial public interest in the respondent's extradition, and that there remains a pressing social need for his rendition.

The Court has very little information concerning the respondent's personal circumstances. He, of course, bears the evidential burden of adducing such evidence if he wishes the Court to take it into account. It is clear from the sparse available evidence that the respondent's roots in this jurisdiction are relatively shallow. He has little in the way of a social or family network. The only family members that he mentions are his wife and mother. His wife, who it is understood now lives in this jurisdiction, was co-accused with the respondent, and was also convicted and sentenced to imprisonment, in the proceedings in Ukraine. Although the respondent's wife was also the subject of an extradition request by the requesting state, that request was withdrawn some time ago. As regards the respondent's mother, it is not clear if she is even within this jurisdiction.

Notwithstanding the various matters that the respondent has put forward in his affidavit there is no reason to believe that his extradition would have profoundly injurious or extraordinary consequences for himself, or for his wife, or for any other members of his wider family.

In all the circumstances of the case the Court has concluded that the proposed extradition measure would not be disproportionate to the legitimate aim being pursued by the issuing state. The Court is not therefore disposed to uphold the respondent's objection to his extradition based upon article 8 ECHR.

**Conclusion:**
In circumstances where this Court has upheld the respondent's objection to his extradition based upon article 3 ECHR, the Court is not disposed to make a committal order under s. 29 of the Act of 1965, and will order the discharge of the respondent.