High Court of Ireland Decisions

Judgment

Title: The Attorney General v A.B.

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[2018] IEHC 583

THE HIGH COURT

Record No. 2015/123 EXT

IN THE MATTER OF THE EXTRADITION ACT, 1965 AS AMENDED

Between:

THE ATTORNEY GENERAL

Applicant

AND

A B

Respondent

Judgment of Ms. Justice Donnelly delivered on the 22nd day of October 2018

1. Introduction

1.1 The United States of America (U.S.A.) seeks the extradition of the respondent for the purpose of putting her on trial in respect of five alleged offences of drug trafficking and money laundering. It is alleged that she and her former husband (whose extradition from South Africa has been requested) were part of a criminal organisation that conspired to import a variety of anabolic steroids, human growth hormone (H.G.H.) and misbranded prescription pills into the United States of America. Those drugs were then distributed to purchasers in the U.S.A. who had ordered the drugs via internet websites operated by members of the organisation. The respondent, together with others, is alleged to have laundered the proceeds from the sale of those drugs, including wiring the proceeds out of bank accounts in the U.S.A. to bank accounts in Austria.

1.2 The main points of objection to extradition are; that the offences do not correspond

with offences in this jurisdiction; that her extradition will create a real risk that she will be subjected to inhuman and degrading treatment due to substandard psychiatric care in United States (U.S) custodial institutions; and that her right to respect for her personal and family life will be violated should she be extradited.

1.3 A feature of the case is that the respondent had been arrested in the United Kingdom of Great Britain and Northern Ireland (U.K.) in September 2012 pursuant to the USA's request for extradition on these alleged offences. She was released on bail of GBPÂ£250,000 which her brother and sister in law provided as independent sureties. Having exhausted all her appellate rights in the U.K., the respondent did not surrender to the Metropolitan Police on the 26th June 2015 for the purpose of extradition. She fled to Ireland, where she was arrested on the 13th July, 2015 on foot of a warrant for her arrest issued by the High Court on the 2nd July, 2015, following a US request for her provisional arrest.

1.4 The respondent was remanded in custody from that date. The length of time in custody in this jurisdiction is over three years and three months. When combined with the time she spent in custody in the U.K., she has spent almost three years and found months in custody in relation to these alleged offences.

1.5 The delay from then until now has been primarily but not exclusively with the consent of the respondent. The reasons for the delay are varied. At first it was due to the respondent seeking time for evidence to be obtained from the U.S.A.; the fact that at an early stage the respondent was deemed by her treating psychiatrist as lacking capacity; delays in obtaining medical reports; the necessity for the Court to seek further information and clarification from the U.S. authorities; and giving the respondent the opportunity to respond to that evidence. A purportedly final hearing in this case took place on the 10th March, 2017. Sometime after that date, the Supreme Court gave leave to appeal in another U.S.A. extradition case, *Attorney General v Davis* [2018] IESC 27. The respondent requested that this case be adjourned pending the determination in that case as it could be of relevance to the legal test that this Court had to apply to one of the respondent's main grounds of objection to extradition. As soon as that decision was delivered, this Court relisted the case for hearing. The respondent filed a further medical report at that time.

1.6 This judgment covers the following matters in the following order:-

1. Introduction

2. The Extradition Act, 1965 and the Ireland-USA Treaty provisions

3. The Formal Proofs for Extradition

4. Correspondence of offences and sufficiency of detail

(A) Compliance with s. 25 (1)(b) - a statement of each offence

(B) The law on correspondence of offences

(C) The offences proffered as corresponding offences

(i) Drugs offences

(ii) The money laundering offences

(D) Minimum gravity

5. Sections 15, 20 and 21 of the Act of 1965

6. Fundamental rights issues

(A) Objections based upon claim of breach of fundamental rights

(B) The personal and family circumstances of the respondent

(C) Lengthy pretrial detention and lengthy sentence of imprisonment

(D) The issue of US prison conditions

(E) The law relating to the right to respect for personal and family life

(F) The Public Interest

(G) The impact of extradition on C and D

(H) The right to respect for the respondent's personal life

(I) The right to respect for the respondent and daughter's family life

(J) Decision on the question of proportionality of the extradition

7. Inhuman and degrading treatment

8. Conclusion

2. The Extradition Act, 1965 and the Ireland- U.S.A. Treaty provisions

2.1 This application for the extradition of the respondent to the U.S.A. is governed by the Extradition Act, 1965 and the extradition treaty arrangements as between Ireland and the U.S.A.. The Attorney General submitted that the formal requirements of the Act of 1965 and the treaty provisions were usefully and conveniently set out by the High Court (Edwards J.) in *Attorney General v. O'Gara* [2012] IEHC 179. The Court agrees that is so and relies upon Edwards J.'s statement on the legal provisions and required proofs.

3. The Formal Proofs for Extradition

3.1 Save for a single issue on the amount of detail provided as regards the offences which shall be addressed later in this judgment, no other issue as regards non-compliance with formal proofs was raised by the respondent. Instead, the respondent stated in her points of objection that, she awaited full proof of proper compliance with the provisions of the extradition, both as to form and substance. The Court, in carrying out its duty under the provisions of the Extradition Act, 1965, is bound to consider

whether the extradition is prohibited under the terms of the Act of 1965.

Extradition to a Country to which Part II of the Act of 1965 applies

3.2 As Edwards J. has set out in *O'Gara* , a request for extradition can only be duly made if the requesting state is one to which Part II of the Act of 1965 applies. The legislative basis upon which the Attorney General submits that the U.S.A. is a state to which Part II of the Act of 1965 applies. I am satisfied that the U.S.A. is a country to which Part II of the Act of 1965 applies.

A person before the High Court under section 27 of the Act of 1965

3.3 The first condition that must be met, if the High Court is to commit a person to prison to await extradition, is that the person must be before the High Court under s. 26 or s.27 of the Act of 1965. This respondent is before the High Court under the provisions of s.27 of the Act of 1965. This arose in circumstances where the High Court, without a certificate of the Minister under s.26(1)(a) of the Act of 1965, issued a warrant for the arrest of the respondent on the 2nd day of July, 2015, following a request for her provisional arrest by the appropriate authorities in the United States of America.

3.4 The respondent was duly arrested on foot of the arrest warrant issued pursuant to s. 27(1) of the Act of 1965 and brought before the High Court. The Court is satisfied that the respondent is before the High Court under s. 27 of the Act of 1965.

Extradition Duly Requested

3.5 The Court must be satisfied under s. 9 of the Act of 1965, that the request for surrender has been duly requested by that country. Under s. 23, the request must be in writing from a diplomatic agent or by any other means provided in the relevant extradition provisions.

3.6 Within a period of 18 days from the respondent's arrest, a request for her extradition was made by United States of America. It was communicated to the Department of Foreign Affairs and Trade by the Embassy of the United States of America in Dublin and was dated 27th July, 2015. The integrated Washington Treaty provides that the request for extradition shall be made in writing and shall be transmitted with supporting documents through the diplomatic channel. I am satisfied that a request transmitted by the Embassy of the United States of America in Dublin to the Department of Foreign Affairs is a transmission through the Diplomatic Channel.

Section 26(1)(b) - Minister's Certificate:

3.7 The Minister certified on the 27th July, 2015, pursuant to s.26(1)(b) of the Act of 1965, that the extradition request for the respondent had been duly made by and on behalf of the U.S.A. and received by her in accordance with Part II of the Act of 1965.

Section 25(a) - certified copy of US warrant of arrest:

3.8 I am satisfied that Brent A. Hannafan, Assistant United States Attorney, Middle District of Tennessee, has exhibited to his affidavit of 17th July, 2015, the certified copy of the arrest warrant for the respondent. This warrant is dated 6th July 2012.

Section 25(c) - Relevant enactments:

3.9 I am satisfied that the relevant enactments are exhibited in the affidavit of Brent A. Hannafan.

Section 25(d) - Description of the person claimed:

3.10 There is a photograph of the respondent exhibited to the affidavit of Brent A. Hannafan. Furthermore, Mr Hannafan has set out an extensive description of the person claimed. This sets out the respondent's date of birth, her Irish citizenship and her passport number as well as a person description. There is also a similar description of the respondent in the Diplomatic Note.

Section 25(b) - Statement of offences:

3.11 The statement of the offences is set out in the Diplomatic Note and (in greater detail) in the affidavit of Brent A. Hannafan - both in the body of the affidavit and in the superseding indictment exhibited to his affidavit. In the course of legal submission regarding the issue of correspondence, counsel for the respondent took issue with the extent of the information provided by the U.S.A. in respect of the offences. As this formed part of the argument on correspondence, this matter will be dealt with under that heading.

Conclusion on formal proofs:

3.12 Subject to consideration of s.25(b), the Court is satisfied that the formal proofs, for the purpose of the application for extradition, have been complied with by the applicant.

4. Correspondence of offences and sufficiency of detail

4.1 The Diplomatic Note contains a brief statement regarding the alleged offences set out in the first paragraph of this judgment, together with a formal statement of each of the counts. That statement is supplemented by the Affidavit of Mr. Hannafan and the Superseding Indictment exhibited therein. A synopsis of the counts and the statement of facts are set out below.

4.2 Mr Hannafan initially set out in general terms the nature and background to the allegations. He alleges that the respondent and her now former husband, J, operated an international internet-based drug trafficking business from at least December 2004 to November 2009. This organisation illegally imported anabolic steroids, H.G.H. (a substance that has effects similar to anabolic steroids) and misbranded prescription pills in the United States of America. They employed individuals in four U.S. states, who received bulk quantities of these drugs. Those drugs were initially produced in China or Moldova. The individuals in the U.S.A. with whom the respondent and her former husband allegedly conspired, then re-packaged the drugs in vials and other packing materials, put labels on the vials and packages that read "Axio Labs" in order "to make it appear they were produced in legitimate laboratories and mailed the drugs to customers in the U.S.A. who had placed order for the drugs on websites created and maintained by members of the organization." A variety of websites relating to weight lifting and body building were used by the organisation to advertise these products.

4.3 Mr Hannafan describes how the investigation began in March 2008 when a package containing 100 vials of H.G.H. was seized by U.S. Customs at John F. Kennedy airport in New York. This package had been sent to the U.S. from China at the direction of the respondent's former husband and was destined for Josh Slizoski who was a co-conspirator located at an address in Mississippi. Ultimately, this lead to a number of seizures of a large number of drugs in a variety of locations, in particular, a variety of named anabolic steroids and other drugs used in connection with taking anabolic steroids. There were also misbranded drugs including three named drugs, two of which are used to treat breast cancer but which are used by bodybuilders to counteract the build-up of oestrogen in the body, which is a side effect of using anabolic steroids. Federal agents also seized evidence of distribution activities at one of the residences. In total, it appears that federal agents seized over 94,000 tablets and over 12,000 millilitres of oils containing anabolic steroids from the organisation's employees in the United States of America. The prescription pills were misbranded as they did not accurately reflect the name of the legitimate manufacturer of the pills and the required

use and warning information.

4.4 Following searches in Tennessee, U.S.A., two members of the organisation are alleged to have cooperated with agents, including a person who is believed to have been the accountant for the organisation's activities in the United States of America. His computer was seized and it shows that the sales were substantial - in 2007 they were consistently in the range of US$300,000 to US$500,000 a month. In the first three months of 2008 the monthly gross sales were US$651,245, US$884,365 and US$874,652. Following cooperation from those individuals, incriminating statements between these men and J were recorded.

4.5 Since 2ndApril, 2008, a total of seven members of the organisation in the U.S.A., who allegedly conspired with the respondent in the crimes, have cooperated in the investigation of the respondent and other alleged members of the criminal organisation. They have provided information to agents about how the organisation operated and the roles of the members and the amounts of illegal profits that were made. An example is given of two other alleged co-conspirators, Anne and Darin Dudash, who ran the centre for the organisation in New Jersey. It is stated by Mr Hannaffan that Anne Dudash detailed for agents the respondent's alleged involvement in the conspiracy to distribute the illegal drugs. It is stated that in her role as a distributor, Anne Dudash discussed the operation's business with both the respondent and J. It is stated that these discussions occurred frequently, primarily through "chatting" over Yahoo or through Skype. It appears that Anne and Darin Dudash pleaded guilty to conspiring to possess with intention to distribute and the distribution of anabolic steroids between February 2006 and 2ndOctober 2008. It is stated that in pleading guilty, they admitted to conspiring with J (but apparently not this respondent) to distribute anabolic steroids and to receiving approximately US$157,000 in payments for their illegal activities during the course of the conspiracy.

4.6 During the course of the conspiracy, J had to serve a prison term in Ireland for steroid distribution charges. It is alleged that prior to going to prison, J told Anne Dudash that she could continue to communicate with him about the distribution business through the respondent. He is alleged to have told Ms Dudash that the respondent would continue to run their illegal drug business from the outside while he was in prison - a discussion which is apparently documented in a Yahoo communication. The respondent is alleged to have authorized a payment of US$2,500 to Anne Dudash from one of J's employees who was located in Israel.

4.7 A key component of the operation was laundering the proceeds of the sale of the illegal drugs by transferring the proceeds out of the United States of America. Customers commonly used AlertPay: an electronic payment system used to pay for purchases. The owner of AlertPal is charged with money laundering offences in the same indictment as the respondent. It is alleged that as part of the organisation's efforts to launder money and avoid detection, the respondent and J opened two accounts at a bank in Austria and had AlertPay wire-transfer the funds to that account. Records in the possession of the U.S. authorities show that Austrian bank accounts in the respondent's name received payments of almost €1,000,000 in money transfers from AlertPay.

4.8 The specific charges are then dealt with individually by Mr Hannafan.

> Count 1: Beginning on a date no later than in or about December 2004, up to and including November 2009, in the Middle District of Tennessee and elsewhere, Conspiracy to manufacture, possess with the intent to distribute and to distribute anabolic steroids in violation of 21 USC s 841 (a)(1) all in violation of s 846 carrying a maximum penalty of 10 years imprisonment.

4.9 Mr Hannafan set out the legal components of the offence. His description of the charge identifies that to satisfy the burden of proof and convict the respondent, the U.S. government would have to establish beyond reasonable doubt; (1) that two or more persons entered an agreement to commit the underlying offence i.e. to manufacture, possess with intent to distribute anabolic steroids and; (2) that the respondent knowingly became a member of the conspiracy to commit the underling offences.

4.10 Mr Hannafan avers that the U.S. government's evidence will establish that the respondent conspired with J and others, to possess with intent to distribute, and distribute anabolic steroids in the U.S.A. i.e. he does not state that the evidence will support the charge of conspiracy to manufacture them. He states that the conspiracy will be shown at trial by the testimony of several cooperating witnesses who will testify; that they joined the conspiracy, headed by the respondent and J; that they worked for both of them in receiving the shipments of anabolic steroids from outside the U.S.A. and that they repackaged and distributed the steroids in the U.S.A.; and that the respondent ran the business when J was in prison. This will also be shown by recorded calls between two individuals and J on given dates, based on the drugs seized from four separate residences, laboratory analysis of the steroids, physical evidence seized in one residence, records and emails on one computer, additional emails and chat messages on Yahoo, wire transfer records from AlertPay, U.S. bank records, the respondent's Austrian bank accounts during 2008 and records depicting the payment to Anne Dudash that the respondent authorised.4.11 Under the heading "Elements of Count 1", it is also stated that the offence of conspiracy to commit offenses against the U.S.A, is specifically, to manufacture, possess with intent to distribute, and distribute anabolic steroids, including among others, Trenbolone Acetate, Trenbolane Enanthate and Testosterone Cypionate.

> Count 2: Beginning on a date no later than in or about December 2004, up to and including November 2009, in the Middle District of Tennessee and elsewhere, Distribution and possession with intent to distribute H.G.H. (in violation of 21 USC s 333(e)(1) and aiding and abetting in the distribution and possession with intent to distribute H.G.H. in violation of 18 USC s 2 carrying a maximum penalty of 5 years imprisonment.

4.13 Mr Hannafan states that the US government must prove beyond reasonable doubt, each of the following; (1) that the respondent or others who were aiding or abetting her, distributed or possessed with intent to distribute H.G.H.; (2) that the H.G.H. was for use in humans other than the treatment of a disease or other recognised medical conditions where such use had been authorized by the Secretary of Health and Human Services and; (3) that the use was not pursuant to the order of a physician.

4.15 The evidence will be that the respondent, aided and abetted by others, distributed and possessed with intent to distribute H.G.H. within the United States of America. Reliance is placed on the seizure of a parcel of 100 vials of H.G.H. in March 2008. Witnesses will give evidence that they worked for J and the respondent in receiving shipments of H.G.H. from outside the U.S.; that the H.G.H. distributed was for use in humans for other than the treatment of a disease or other recognised medical condition; and that the use was not pursuant to an order of a physician and that they repackaged and the distributed the H.G.H. in the U.S.. The evidence will be that the use of the H.G.H. by the conspirators has not been authorised by the Secretary of Health and Human Services. Mr. Hannafan refers to the specific evidence as to what will be shown at trial as set out above e.g. the respondent's payment to Anne Dudash for expenses associated with the possession and distribution of H.G.H..

> Count 3: Beginning on a date no later than in or about December 2004, up to and including November 2009, in the Middle District of Tennessee and elsewhere, Importing H.G.H. and misbranded drugs into the United States and receiving, concealing, selling and facilitating the transportation

of such merchandise after importation in violation of 21 USC s 331(a), 21 USC ss 352(f) and 333 (e), all in violation of 18 USC s 545 and aiding and abetting these crimes, in violation of 18 USC s 2 carrying a maximum penalty of 20 years imprisonment.

4.16 Mr Hannafan states that the US government must prove beyond reasonable doubt each of the following: (1) that the respondent fraudulently and knowingly imported or brought into the U.S.H.G.H. or misbranded drugs or H.G.H.; (2) that she did so with the intent to distribute those drugs and; (3) that she was aided and abetted by other in importing or bringing into the U.S. misbranded drugs or H.G.H with the intent to distribute the drugs.

4.17 He avers that the U.S. government will show that the respondent aided and abetted by others imported H.G.H. and other misbranded drugs into the U.S. and then distributed these drugs to U.S. customers. The evidence is that the products were repackaged and relabelled "Axio Labs" in the U.S. to make it appear that they were produced in legitimate laboratories and then mailed to customers in the U.S.. He again refers to the specific evidence as to what will be shown at trial as set out above including the reference to the payment of Anne Dudash's expenses by the respondent.

Count 4: Beginning on a date no later than in or about December 2004, up to and including November, 2009, in the Middle District of Tennessee and elsewhere, Conspiracy to engage in laundering of monetary instruments and transmitting money outside the United States in violation of 18 USC ss 1956(a)(1)(A)(i), 1956(a)(1)(B)(i), 1956 (a)(2)(A) and 1956(a)(2)(B)(i) all in violation of 18 USC s 1956(h) carrying a maximum penalty of 20 years imprisonment

4.18 Mr Hannafan states this charges her with conspiracy to commit four different money laundering offences but that the government only has to prove that she is guilty of one of the separate offences to be guilty under this count. He lists the individual offences one of which must be proved beyond reasonable doubt:

a) (1) That she joined a conspiracy to conduct financial transactions, knowing that the property involved in the financial transactions were the proceeds of a specified unlawful activity i.e. the crimes alleged in Counts 1,2 and 3 and (2) with the intent to promote the carrying on of those crimes and (3) that at least one co-conspirator committed at least one overt act in furtherance of the conspiracy

b) That she joined a conspiracy to conduct financial transactions, knowing that the property involved in the financial transactions were the proceeds of a specified unlawful activity i.e. the crimes alleges in Counts 1,2 and 3 and (2) knowing that the transaction(s) were designed in whole and in part to conceal and disguise the nature, source, ownership, and control of those proceeds and (3) that at least one co-conspirator committed at least one overt act in furtherance of the conspiracy

c) That she joined a conspiracy to transport, transmit or transfer funds from a place in the U.S. to or through a place outside the U.S. (2) with the intent to promote the carrying on of a specified unlawful activity i.e., the crimes alleged in Counts 1,2 and 3 and (3) that at least one co-conspirator committed at least one overt act in furtherance of the conspiracy

d) That she joined a conspiracy to transport, transmit or transfer funds from a place in the U.S. to or through a place outside the U.S. (2) knowing that the funds involved in the transportation, transmission or transfer represented the proceeds of some form of unlawful activity i.e., the crimes alleged in Counts 1,2 and 3 and (3) knowing that said

transportation, transmission, or transfer was designed in whole or part to conceal and disguise the nature, source, ownership, and control of said fund; and (4) that at least one co-conspirator committed at least one overt act in furtherance of the conspiracy

4.19 He states that the U.S. Government's evidence will establish that the respondent and her co-conspirators laundered the proceeds from the illegal sale of the steroids, H.G.H. and misbranded drugs in the United States of America. Reliance will be placed on the testimony of witnesses to demonstrate that J along with the respondent agreed with others to import steroids, H.G.H. and misbranded pills into the U.S. from China and elsewhere which were distributed to U.S. customers who had purchased the steroids, H.G.H. and pills via the internet; that the conspirators knowingly used the proceeds of the sales to conduct financial transactions to promote the carrying on of the illegal activities, for example, to advertise on body-building websites, pay salaries of employees of the business and purchase additional drugs; that the respondent, J and their co-conspirators had customers use Alertpay to conceal and disguise the nature and source of the proceedings; that B opened bank accounts in Austria, and; that proceeds were transferred to the accounts in the respondent's name to avoid detection by law enforcement and conceal the nature of the funds.

Count 5: Beginning on a date no later than in or about December 2004, up to and including November, 2009, in the Middle District of Tennessee and elsewhere, Conspiracy to engage in monetary transactions in criminally derived property of a value greater than $ 10,000 in violation of 18 USC s 1956 (h) carrying a maximum penalty of 20 years imprisonment

4.20 Mr Hannafan outlines that the U.S. government must prove beyond reasonable doubt each of the following essential elements; (1) that there was a conspiracy to engage in monetary transaction in excess of US$10,000; (2) that the respondent joined that conspiracy; (3) that the funds involved in those monetary transactions were proceeds from selling steroids, H.G.H. and misbranded drugs as alleged in Counts 1, 2 and 3 and; (4) that at least one conspirator committed at least one overt act in furtherance of the conspiracy.

4.21 He states that the U.S. Government will establish that J and the respondent headed a drugs conspiracy that import and distributed steroids, H.G.H. and misbranded pills into the United States that were distributed to customers in the United States and that members of the conspiracy then engaged in monetary transactions using the proceedings from the sales in increments of over US$10,000 during the course of the conspiracy. He states that, for example, there were transfers in 2008 of proceeds from the sale of the drugs to the respondent's Austrian bank account in increments of more than US$10,000 as described in a spreadsheet which was attached to his affidavit.

(A) Compliance with s. 25 (1)(b) - a statement of each offence

4.22 Counsel for the respondent submitted that there was "an extraordinarily sparse account of the acts". This was made as part of his submission that there was no correspondence and it was necessary under the Act of 1965 to have a greater level of information as to the facts. Counsel for the Attorney General has in turn pointed to the statement of the facts as set out above and he contrasts the provisions of the Washington Treaty with regard to the requirement that Ireland provide to the U.S.A. "reasonable grounds for believing that an offence has been committed". This is not required of the U.S.A. in their requests for extradition. Counsel for the Attorney General submits that what has been sought by the respondent is not required by the Act of 1965 or by the Treaty provisions.

The Detail in the Request

4.23 This Court has set out a significant part of the detail contained in the statement of

facts. Article VIII para 3 (b) of The Integrated Washington Treaty, requires a statement of the "pertinent facts" of the case, indicating as accurately as possible the time and place of commission of the offence. Under the terms of s. 25(1)(e) of the Act of 1965 as amended, the extradition request is required to be supported by any other document required under the relevant extradition provisions". As the Washington Treaty requires a statement of the pertinent facts this is a document required under the Act of 1965.

4.24 It is not necessary to show every piece of evidence in the possession of the requesting state. The statement of the pertinent facts is all that is required. (See *Attorney General v Damache* [1015] IEHC 339 at para 4.3.4) The request for extradition concerns allegations of crimes which have international dimensions but the focus of the alleged crimes is the illegal distribution in the U.S.A. of anabolic steroids, H.G.H., misbranded pills and the laundering of the proceeds of those crimes. The time period is set out and the place of the crimes is set out by reference to a variety of states in which the distribution took place, the place of manufacture of the drugs and the location of the laundering of the money. The respondent's alleged involvement is set out also. The Court accepts, and there is no evidence to the contrary, that this has been done "as accurately as possible."

4.25 The Court is satisfied that in relation to each count on which extradition is sought, there is sufficient statement of what is alleged against the respondent to enable this Court to carry out its functions under the Act of 1965. The detail is sufficient to allow the Court to consider whether the acts correspond with offences in this jurisdiction and they are also sufficient to enable this respondent to know precisely why she has been arrested.

(B) The law on correspondence of offences

4.26 Both parties were largely in agreement as to the law on correspondence of offences. Under the relevant provisions of s.10 of the Act of 1965, 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 a least one year or by a more severe penalty. Section 10 subsection 3 provides that "[a]n 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…."

4.27 The Supreme Court, in the case of *Attorney General v. Dyer* [2004] 1 IR 40, clarified that it is not an equivalence of the juristic elements of the offence that the court must enquire into, rather "the correspondence inquiry depends on the facts alleged in the warrant." Therefore, this Court must examine the acts alleged and not the definition of the offence under the law of the requesting state.

4.28 Counsel for the Attorney General also referred to the decision of the Supreme Court in the case of *Minister for Justice v Szall* [2013] 1 IR 470. That case dealt with surrender under the European Arrest Warrant Act 2003, but the Supreme Court held that there was no material difference, so far as correspondence was concerned, in the law as it stood under the Extradition Act 1965 and the law as it stood under the European Arrest Warrant Act 2003. The Supreme Court held that, where an offence was only specified as occurring by reference to non-compliance with an Irish statutory regime, the correct approach for the purposes of correspondence was to regard the offence as occurring where the act or omission concerned was defined by reference to a lawful regime, rather than the specific Irish regime.

4.29 Counsel submitted that where compliance with, or breach of, an Irish statutory provision was an ingredient of an offence in this State, such offence could amount to a corresponding offence if the relevant statutory provision or regime by reference to which

the Irish offence was defined, was sufficiently similar to an equivalent regime in the requesting state by reference to which the offence in that state was defined. Furthermore, differences between the terminology used in offences or differences between the range of persons or bodies with decision-making power in respect of offences did not, as a matter of course, render two statutory regimes sufficiently different so as to exclude correspondence between those offences. In *Szall* , Clarke J (as he then was), stated that when comparing statutory schemes from different jurisdictions:

> *[49] The real question which must be asked is as to whether those statutory regimes themselves are sufficiently similar so that breach of one may be taken to correspond to breach of the other even though the schemes are not, for obvious reasons, the same scheme.*

(C) The offences offered as corresponding offences:

(i) Drug related offences: Counts 1, 2 and 3:

4.30 The Attorney General offered two distinct bases on which this Court could find correspondence. The first basis was that these offences were contrary to a variety of offences set out in regulations made under the Irish Medicines Board Act, 1995 as amended ("the Act of 1995"). Under s. 32 of the Act of 1995, the Minister for Health is entitled to make regulations to provide for the control of the manufacture, production, preparation, importation, distribution, sale, supply and placing on the market of medicinal products for human use which include H.G.H. and anabolic steroids. Section 32 of the Act of 1995, as amended by s. 16 of Irish Medicines Board (Miscellaneous Provisions) Act, 2006, provides for inter alia, a penalty of a term of imprisonment not exceeding 10 years on conviction on indictment.

4.31 Counsel also submitted that the nature of the acts alleged to have been committed amounted to a conspiracy contrary to s.71(1) of the Criminal Justice Act, 2006 as amended ("the Act of 2006") which provides:

> *"Subject to subsection (2) and (3), a person who conspires, whether in the State or elsewhere, with one or more persons to do an act_*
>
> *(a) In the State that constitutes a serious offence, or*
>
> *(b) in a place outside the State that constitutes a serious offence under the law of that place and which would, if done in the State, constitute a serious offence,*
>
> *(c) is guilty of an offence irrespective of whether such act actually takes place or not."*

A serious offence means an offence for which a person may be punished by imprisonment for a term of 4 years or more. The offences that the Attorney General has relied upon under the Act of 19955 all carry sentences in excess of 4 years and are therefore serious offences within the meaning of the Act of 2006.

4.32 The second basis relied upon by the Attorney General was that these acts amounted to an offence contrary to section 72 of the Criminal Justice Act, 2006 as substituted by s.6 of the Criminal Justice (Amendment) Act, 20099. This is an offence of, with knowledge of the existence of the criminal organisation, participating in or contributing to any activity, intending or being reckless, "to enhance the ability of a

criminal organisation or any of its members to commits, or (ii) facilitate the commission by a criminal organisation or any of its members of, a serious offence."

Irish Medicines Board Act, 1995:

4.33 The premise of the Attorney General's submission is based upon the definition of "medicinal product". Indeed, it was initially submitted that the products referred to in the extradition were "clearly" medicinal products. It was submitted that under E.U. and Irish law, a "medicinal product" is defined as:

> *(a) Any substance or combination of substances presented as having properties for treating or preventing disease in human beings; or*
>
> *(b) Any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.*

(as per section 1(1) of the Act of 1995 as amended by section 10(1) of the Irish Medicines Board (Miscellaneous Provisions) Act, 2006 which provides that "medicinal product" has the meaning assigned to it by Directive 2001/83/EC of 6th November 2001 as amended. The definition in the 2001 Directive has been amended by Directive 2004/27/EC.)

4.34 An unfortunate aspect of this case was that, despite the case having been set down for hearing for some considerable time, the Attorney General never sent the respondent any indication of the corresponding offences upon reliance would be placed. It has been standard practice for some time now in extradition/surrender cases that the Chief State Solicitor sends this information by letter to the solicitor for the respondent and to include this letter in the book of pleadings for the court. Indeed, Edwards J, has previously given a direction that this should happen in all extradition/surrender cases.

4.35 The absence of this step in this case had the result that counsel for the respondent was unable to respond initially to the submissions; however, after overnight consideration, counsel for the respondent made a number of arguments which, in circumstances set out further below, resulted in the Attorney General seeking to place further evidence before the Court. Despite objection, the Court granted this application and the affidavit of Mr Laurence O'Dwyer of the Irish Medicines Board was placed before the Court. That necessitated a further adjournment to permit the respondent to engage an expert with a view to considering how to respond. This case highlights the necessity for the Chief State Solicitor to provide the respondent and the High Court with information as to the corresponding offences in advance of the date for hearing. Although the High Court has obligations of enquiry in respect of extradition/surrender cases, there is also an obligation to conduct the hearing fairly. In future cases, the High Court will have to be mindful of the clear indications it has given as regards the indication of corresponding offences, in deciding whether to grant any further adjournments.

Objection to reliance on the definition of medicinal product:

4.37 Counsel for the respondent had an initial objection to the Attorney General or the Court placing any reliance on the definition of ‘medicinal product'. This objection was based upon the definition of medicinal product in s. 1(1) of the Act of 1995 as amended by s.10 (c) of the Act of 2006, which itself is premised upon the meaning assigned to it by Directive 2001/83/EC of 6 November, 2001 "as amended from time to time". Counsel submitted that this was a definition which purported to define the concept of medicinal products but in fact did not do so at all. He submitted that it was unacceptable that the

Oireachtas defined part of a criminal offence, by reference to another body and also by reference to unclear language. Indeed, counsel referred to the fact that this definition has been amended by a later Directive, namely 2004/27/EU.

4.38 The Court is of the view that the language is clear. This is a definition of medicinal product in Irish law that makes it subject to a definition that is given in a European Directive. The Act is implementing that Directive. It is clear that if the definition in the European Directive is changed, then the definition in the Irish Act is also changed. The definition in Directive 2001/83/EC had already been amended by the 2004 Directive at the time of the enactment of the Act of 2006. This did not affect the fact that it was a definition provided by the Directive of 2001. There is no "doubtful criminality" brought about in the legislation: it is a particular manner of implementing the Directive by making the definition of medicinal product provided by the Directive, or any amendment of the Directive, the definition which applies in Irish law.

4.39 With regard to the submission that it is impermissible for the Oireachtas to permit another body to amend the legislation, the Court does not accept that this is an argument that can validly be made in the context of these proceedings. The Act of 2006 and the Act of 1995 have a presumption of constitutionality. The Court cannot in these proceedings arrive at a decision regarding the inability of the Oireachtas to permit a definition, based upon an EU directive, to be subject to an amendment of that directive. This Court will therefore apply the definition as provided for in the Act of 2006 which amends the Act of 1995.

The respondent's submission on medicinal products:

4.40 Counsel for the respondent very helpfully brought the Court's attention to the decision of the Court of Justice of the European Union in the case of D and G (Case 358/13 and C-181/14) dated 14th July 2014. This case considered whether substances consumed solely for their intoxication inducing psychoactive effects fall to be regarded as coming within the definition of medicinal product. The Court of Justice of the European Union held that the Directive did not cover substances which produce effects that merely modify physiological functions, but which are not such as to have any beneficial effects, either immediately or in the long term, on human health, are consumed solely to induce a state of intoxication and are, as such, harmful to human health. Counsel submitted that the submission on behalf of the Attorney General that these were "clearly" medicinal products could not stand.

4.41 As stated above, the Attorney General sought and was granted leave to file further evidence. This evidence is set out in the following paragraphs.

The affidavit of Laurence O'Dwyer:

4.42 Lawrence O'Dwyer is by qualification a pharmacist and he is the scientific affairs manager of the Health Products Regulation Authority (H.P.R.A.), which was previously known as the Irish Medicines Board. This is a statutory body established pursuant to the Irish Medicines Act 1995 as amended.

4.43 In his report Mr O'Dwyer states that "anabolic steroids" is the familiar name for synthetic substances that are closely related to the main male sex hormone testosterone. He sets out their physiological and androgenic effects and says that anabolic steroids can be used medicinally to treat conditions such as male hypogonadism (where patients fail to produce significant levels of testosterone), some aplitic anaemias, osteoporosis and possibly to treat muscle wasting due to sever chronic illness. In his view, anabolic steroids have established legitimate medical uses which would fall within the second part of the definition of a medicinal product. Such use requires a prescription from a registered medical practitioner and careful medical

supervision during use.

4.44 Mr O'Dwyer goes through each of the drugs that were stated to have been seized by U.S. federal agents. He says that these drugs are either anabolic steroids (in total eight, although two of which he was not able to obtain information about medicinal uses of these specific substances in humans, namely, dromostanolone propionate and trenbolane), a non-steroidal aromatase inhibitor with a number of approved medicinal uses, a PDE-5 inhibitor used in the management of erectile dysfunction, a non-steroidal agent stimulating ovulation, a naturally occurring thyroid hormone or an ester derivative of testosterone which can be used to treat medical conditions and a direct acting sympathomimetic with similar actions to drugs such as those used for asthma. In relation to the anabolic steroids, some have marketing authorisation approved by the H.P.R.A. or by the European Commission, or both. Some do not have any authorisations, but they have been medically authorised in the U.S. for human use. In relation to the other drugs in the list, it appears that they are medical products.

4.45 In relation to H.G.H., Mr. O'Dwyer says that it. is produced by the pituitary gland and promotes growth in children and adolescents. H.G.H. is regarded in Ireland as a medicinal product.

4.46 Mr O'Dwyer outlines that classification as a medicinal product does not necessarily mean that the product will be approved as a medicinal product. This requires a particular detailed assessment of risks and benefits. He gives his opinion that the anabolic steroids in general, H.G.H. and the other substances listed above would be considered by the H. P.R.A. to be medicinal products within the second part of the definition of a medicinal product based on their known functions and actions which mean that they have the potential to restore, correct or modify physiological functions by exerting a pharmacological or metabolic action.

4.47 As regards Trenbolane Acetate and Trenbolane Enanthate, the active moiety in these substances is trenbolane which is an anabolic steroid, but Mr O'Dwyer was not able to obtain any information in relation to medical uses of these specific substances in humans. They are listed in Schedule 1 of the Medicinal Product (Prescription and Control of Supply) Regulations as amended.

The submissions on the evidence of Mr O'Dwyer

4.48 Counsel for the Attorney General observed that the nature of the substances was inherently different from the cannabis which was the subject matter of the cases D and G. He also submitted that the affidavit of Mr Dwyer establishes the uses of anabolic steroids and H.G.H. and that these are medicinal products.

4.49 He referred to the three specific substances listed in respect of count 1 but points out these were not the sole drugs involved, these were simply those at the end of a long list. In his submission, it is sufficient correspondence to show that one of the matters on the list is a medicinal product. He distinguished the case of *Minister v Laks* [2009] IEHC 3, which involved a single allegation of passing 13 cheques. It could not be shown that there was dishonesty in respect of all 13 cheques and therefore there was no correspondence here. That did not apply to a case of conspiracy, where one does not have to show that every element of what is alleged is a crime. If a person conspired with others to import one medicinal product and a bag of garden herbs such as parsley, the person has committed an offence against the law of the State.

4.50 Counsel for the respondent submitted that if the respondent is sent to the U.S.A. she will be prosecuted in the U.S. for a conspiracy which relates to a large number of items the possession or distribution of which is not an offence in Ireland. This was the

matter with which this Court has to be concerned. The acts alleged do not amount to a conspiracy here as many of the drugs are not medicinal products in this State.

Conclusion on Correspondence of Drug offences

4.51 The Court is satisfied from the evidence of Mr O'Dwyer that "anabolic steroid" is the familiar name for synthetic substances that are closely related to the main male sex hormone testosterone. These can be used medicinally to treat various matters. I am satisfied that nandrolonephenylproprioate, oxymetholone, fluoxymesterone, oxandrolone, and mythltestosereone are anabolic steroids within the definition of medicinal product in the Act. I am satisfied that tetrozole, tadalafil, clomifene, exemestane, anastrozole, liothyroonine (I accept this is the drug referred to), testosterone cyprionate and clenbutorol are also medicinal products. Both trenbolone acetate and trenbolone enanthate have an active moiety namely, trenbolone, which is an anabolic steroid, but neither of these substances appears to have any medical uses. They are, however, listed in Schedule 1 of the Medicinal Product (Prescription and Control of Supply) Regulations. The final drug, dromostanolone propionate is an anabolic steroid but does not appear to have a medicinal uses and is not listed in the Schedule. H.G.H. is also a medicinal product.

4.52 Exercising his power under section 32 of the Irish Medicines Board Act, 1995, the Minister for Health has made a number of regulations to provide, inter alia, for the control of the manufacture, production, preparation, importation, distribution, sale, supply and placing on the market, medicinal products for human use which include H.G.H. and anabolic steroids. Certain products such as clenbuterol, otherwise known as "Angel Dust", are completely prohibited and cannot be lawfully imported into or supplied in Ireland whereas certain products such as Anastrozole are prescribed and can only be imported into or supplied within the State subject to strict licensing requirements. As Mr O'Dwyer has stated it is not every medicinal product that will be licensed and the fact that clenbuterol is banned totally in Ireland does not prevent it from being a medicinal product.

4.53 Counsel for the Attorney General put forward a large number of offences contained in regulations that are said to amount to corresponding offences if these acts were committed in Ireland. The Court finds it appropriate to refer to three of them as follows:

a) Pursuant to Regulation 4 of the Medicinal Products (Control of Manufacture) Regulations 2007 (SI 539/2007) a person cannot import into the State any medicinal product unless he or she holds a manufacturer's authorisation:

> *"4. Subject to the provisions of these Regulations, a person shall not*
>
> *(a) manufacture for supply in the EEA,*
>
> *(b) manufacture for export, or*
>
> *(c) import*
>
> *any medicinal product unless he or she is the holder of a manufacturer's authorisation."*

b) It is a contravention of Regulation 5(1) of the Medicinal Product (Prescription and Control of Supply) Regulations 2003 (SI 540/2003) as amended by the Medicinal Product (Prescription and Control of Supply)

Amendment Regulations (SI 512/2008) to supply a product containing a prescription only medicinal product otherwise than in accordance with a prescription and, furthermore, under Regulation 6, such supply can only be made by a person lawfully conducting a retail pharmacy business and by or under the personal supervision of a registered pharmacist.

Section 5(1) of SI 540/2003 as substituted by Regulation 6 of SI 512/2008 states that:

> *"Subject to the provisions of these Regulations, a person shall not supply a medicinal product of any of the following classes except in accordance with a prescription, namely -*
>
> *a) any medicinal product in respect of which a Community marketing authorisation or marketing authorisation has been granted, and such authorisation contains a statement that the product is to be available only on medical prescription*
>
> *b) any medicinal product, in respect of which no Community marketing authorisation has or marketing authorisation or consists of or contains a substance specified in column 1 of the First Schedule or a substance which is a new chemical molecule;*
>
> *c) …*
>
> *d) ,,,*
>
> *and the supply shall be made by a person lawfully conducting a retail pharmacy business by or under the personal supervision of a registered pharmacist"*

This includes, *inter alia* , any medicinal product which contains a substance specified in column 1 of the First Schedule, a dosage to be administered by an injection or an infusion or a substance, which is a new chemical molecule. The majority of the products seized by the U.S. authorities in this case, for example, Nandrolone Phenylpropionate, Letrozole, Tadalfil, Oxymetholone, Exemestane fall within the First Schedule.

For the purposes of these regulations "supply" includes sell, distribute or offer or keep for sale, supply or distribution, notwithstanding that the person supplied may be in another Member State of the European Community and cognate words shall be construed accordingly.

> c) Regulation 19 of the Medicinal Products (Prescription and Control of Supply) Regulations 2003 (SI 540/2003) prohibits the supply of medicinal products such as H.G.H. or anabolic steroids by mail order in this jurisdiction. "Supply by mail order" means any supply made, after solicitation of custom by the supplier, or by another person in the chain of supply whether inside or outside of the State, without the supplier and the customer being simultaneously present and using a means of communication at a distance, whether written or electronic, to convey the custom

solicitation and the order for supply.

4.54 The facts in the request do not make specify there was a manufacturers' authorisation. Indeed, it is stated that these drugs were brought into the U.S.A. from outside, with China specifically mentioned as a source. There is no statement that the manufacturer of the drugs did not given an authorisation to the import of the drugs into the U.S.A. and on the facts it is not possible to draw that as an inevitable inference. I am not satisfied that there is a breach of Regulation 4 of SI 539/2007.

4.55 On the other hand, it is clear that the alleged conspiracy as set out in Count 1 related to the distribution of anabolic steroids without prescription. Pursuant to Regulation 5(1) of SI 540/2003 as amended by SI 512/2008, it amounts to an offence in Ireland to supply i.e. distribute anabolic steroids (which are medicinal products), whether they have a marketing authorisation or not, without prescription. Therefore, a conspiracy such as that outlined in the statement of offence in so far as it related to the anabolic steroids which are medicinal products, would, if committed in this jurisdiction, amount to a conspiracy to supply those medicinal products contrary to this Regulation. Furthermore, the supply alleged in the extradition documents has not been by a person lawfully conducting a retail pharmacy business and by or under the personal supervision of a registered pharmacist

4.56 The respondent makes the point that all the substances must be illegal before correspondence with an offence can be established in this jurisdiction. In the case of *Attorney General v Damache* , this Court considered correspondence and the statement by the Supreme Court in *Hanlon v Fleming* [1981] IR 489, that the facts must be considered "in their entirety or in their near entirety" to see if they constitute an offence. The Court stated in *Damache* , "[i]f any part of the facts (which are considered in their entirety or near entirety) amounts to an offence in this jurisdiction, then there is correspondence or double criminality under…the Act of 1965."

4.57 I consider it clearly established in the evidence that the allegations cover a greater number of illegal drugs than a single medicinal product. The vast majority of drugs that are covered are clearly medicinal products in Ireland for which clearly established criminal offences for unauthorised supply. The real position with respect to Count 1, is that the allegation reveals that the drugs involved in its near entirety are medicinal products which it is illegal to supply without prescription. On any interpretation of the phrase "in their entirely or in their near entirety", the facts alleged in the extradition documents come squarely within it.

4.58 The respondent also objects to extradition on the basis that she is facing a more serious allegation in the U.S. than would amount to a criminal offence here is unsustainable. In the first place, extradition agreements such as the one between the U.S.A. and this State, permit each country to apply its own penal standards to the facts alleged and the only restriction is on meeting minimum standards of gravity. Secondly, in a conspiracy offence even in this jurisdiction, the offence is committed when all essential features are present, even though not all allegations may subsequently be proven.

4.59 The Court observes that although the name of the charge in the U.S. refers to anabolic steroids, it is the acts which must correspond. The U.S. attorney has listed a number of drugs specifically as being included in the elements of count no. 1. Although the first two of them appear to be anabolic steroids and are in the Schedule to the Medicinal Products (Prescription and Control) Regulations, it appears on their own they are not medicinal products. The final drug mentioned specifically by him is not an anabolic steroid as is understood in this jurisdiction but nonetheless it is a medicinal product. It is, therefore, a product which is illegal to supply without a prescription i.e. contrary to Regulation 5(1) of The Medicinal Products (Prescription and Control of Supply) Regulations, 2003 as amended. Therefore, it is an offence to conspire to supply

such a drug in Ireland in such a manner. Moreover, it is established from the totality of the evidence that has been given that the offence relates to anabolic steroids generally, including those seized in the raised by Federal agents in April 2008. As set out above, the majority of those anabolic steroids are medicinal products and the conspiracy to supply these drugs would be an offence in Ireland.

4.60 I am satisfied that the facts allege a conspiracy which if committed in Ireland, would be an offence in this jurisdiction. It has never been suggested that because it was not alleged that the respondent was not present in the U.S.A. at the time of the alleged offences that there was no correspondence of offences. When transposing the facts for the purpose of assessing correspondence of offences, it is necessary to consider this as a conspiracy of a person, based in the U.S.A. to supply medicinal products in Ireland. An agreement to supply medicinal products in Ireland without prescription is an offence of conspiracy in this jurisdiction, regardless of where the agreement was made or the location of the person entering into that conspiracy.

4.61 With regard to Count 2, which is the distribution and possession with intent to distribute H.G.H. for use in humans other than the treatment of a disease or other recognized medical condition, it has been established that this is a medicinal product. It is an offence to supply such a product in this jurisdiction without a prescription. There is clear correspondence therefore with the substantive offence in this jurisdiction, namely Regulation 5(1) of The Medicinal Products (Prescription and Control of Supply) Regulations, 2003 as amended. I am also satisfied that the alleged acts in the request correspond with the offence of conspiracy to commit such an offence.

4.62 In respect of count 3, the title of the offence refers to the fraudulent and knowing import of the drug H.G.H. and other misbranded drugs but it also refers to receiving, concealing, selling and facilitating the transportation of the drugs after importation. As indicated above, it is not the legal provisions that must correspond with an offence in this jurisdiction, it is the acts allegedly committed by the requested person that must be assessed with respect to correspondence.

4.63 The Attorney General has suggested an offence of "supply by mail order". The Court is not satisfied that there has been a "supply by mail order" as the offence in this jurisdiction requires supply *after solicitation* of custom by the supplier. There is no evidence that the supplier i.e. that the suppliers in China had solicited the custom. Even if the organisation is said to be the "supplier" there is no evidence that it had solicited the custom. Therefore, there is no correspondence with that particular offence under regulation 19 of the Medicinal Products (Prescription and control of Supply) Regulations 2003.

4.64 The acts alleged also include however, the sale of the H.G.H. and the misbranded drugs in the same manner as in the other counts i.e. these are drugs sold without a prescription. For that reason, the Court is satisfied that the acts alleged against this respondent would, if committed in this State amount to an offence under Regulation 5 of the Medicinal Products (Prescription and Control of Supply) Regulations 2003 (SI 540/2003). It is noted that the "misbranded drugs" referred to specifically by Mr Hannafan are clenbuterol, letrozole and arimidex, which are all medicinal products in Irish law. Therefore, the supply of these drugs without a prescription is a criminal offence in this jurisdiction.

4.65 An alternative candidate put forward by the Attorney General for correspondence of all these offences is section 72 of the Criminal Justice Act, 2006 as substituted by the Criminal Justice (Amendment) Act, 1999 which creates the offence of participating or contributing to any activity of a criminal organisation, when knowing of the existence of the organisation and intending or being reckless as to enhancing or facilitating the

ability of the criminal organisation or any of its members commit a serious offence. There was considerable argument concerning the requirements of correspondence with this particular offence, with counsel for the Attorney General saying it was sufficient for correspondence to be at a high level of abstraction i.e. there was no need to focus on the nature of the specific serious offence that was being facilitated or enhanced, as the focus should be on the basis that it was illegal to participate in the manner set out with a criminal organisation's activities. That, it was submitted was sufficient to establish correspondence. In light of the Court's conclusions on other matters it is not necessary to resolve this issue.

(ii) The Money Laundering Offences

4.66 Counsel for the Attorney General puts forward the s. 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 as a corresponding offence. Section 7 provides:

> *"7.— (1) A person commits an offence if—*
>
> > *(a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:*
> >
> > > *(i) concealing or disguising the true nature, source, location, disposition, movement or ownership of the property, or any rights relating to the property;*
> > >
> > > *(ii) converting, transferring, handling, acquiring, possessing or using the property;*
> > >
> > > *(iii) removing the property from, or bringing the property into, the State,*
> >
> > *and*
> >
> > *(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct."*

4.67 The facts set out above in respect of counts 4 and 5 allege activity that at a minimum amount to the removal from the country (when transposed for the purpose of correspondence - Ireland) to a third country, Austria, of the proceeds of criminal conduct, namely the sale of medicinal products without prescription. In those circumstances, there is correspondence of the alleged offences set out in counts 4 and 5 with the offence of money laundering in this jurisdiction contrary to s. 7 of the Act of 2010.

4.68 The facts alleged would also amount in this jurisdiction to an offence of conspiracy to commit money laundering offences contrary to s. 71(1) of the Criminal Justice Act, 2006.

(D) Minimum Gravity

4.69 The requirement of minimum gravity must be met in respect of each offence before extradition can be ordered for that offence i.e. they must be offences where they are punishable by imprisonment for a maximum period of at least one year or by more severe penalty in the U.S.A. and in this State. As set out above the minimum gravity of one year sentence of imprisonment has been met in the U.S.A.. In this jurisdiction the offences of breach of the Regulations regarding medicinal products carry a penalty of inter alia, 10 years imprisonment on indictment which is in excess of one year. The

offence under s. 7 of the Act of 2010 carried a penalty of inter alia, imprisonment for a term not exceeding 14 years, again which is in excess of one year. The offences which correspond to conspiracy offences carry the penalty of the substantive offence. The Court is satisfied therefore that the requirements of minimum gravity have been met in respect of each offence.

5. Sections 15, 20 and 21 of the Act of 1965

5.1 The respondent objected to her extradition on the basis that it was prohibited by reason of s. 15 of the Act of 1965 as amended in circumstances where the alleged offences are alleged to have occurred within the jurisdiction of the State. This position was not abandoned during the course of the hearing but no submissions were addressed towards it.

5.2 Counsel for the Attorney General correctly pointed out that the wording of the point of objection had been taken from s. 15 as originally drafted, whereas amended relevant part of s. 15 now reads:

> *s.15(1) "Extradition shall not be granted for an offence which is also an offence under the law of the State if-*
>
> > *(a) the Director of Public Prosecutions or the Attorney General is considering, but has not yet decided, whether to bring proceedings for the offence against the person claimed, or*
> >
> > *(b) proceedings for the offence are pending in the State against the person claimed."*

5.3 The respondent did not bring any evidence to the Court to even raise the possibility that the Director of Public Prosecutions or the Attorney General were considering whether to bring proceedings, or that proceedings in the State are pending against the respondent. In the circumstances the Court is satisfied that there is no basis for holding that the extradition is prohibited under s. 15 of the Act of 1965.

5.4 The respondent also claimed that her extradition was prohibited under s. 20 and s. 21 of the Act of 1965. Section 20 of the Act of 1965 deals with the rule of specialty and s. 21 deals with re-extradition to a third country. Both of these sections prohibit extradition unless provision if made "by the law of the requesting country or by the extradition agreement" that either the person will not be proceeded against or punished except in very specific circumstances or the person will not be re-extradited to a third country save in very specific circumstances.

5.5 Article XI of the Integrated Washington Treaty provides for recognition of the rule of specialty in the manner as set out in s. 20 of the Act of 1965. Therefore, the respondent's extradition is not prohibited under s. 20 of the Act. Article XI of the Treaty also deals with re-extradition to a third country and prohibits such re-extradition except on the specific conditions as set out in s. 21 of the Act of 1965. The respondent's extradition is similarly not prohibited under s. 21 of the Act of 1965.

6. Fundamental Rights Issues

(A) Objections based upon claim of breach of fundamental rights

6.1 The respondent claims that her extradition to the U.S.A. is prohibited on the ground that to surrender her would amount to a disproportionate interference with both her own and her daughter's personal rights and family life contrary to Article 40 and Article 41 of Bunreacht na hÉireann as well as Article 8 of the European Convention on Human

Rights (hereinafter "the personal and family rights ground"). The respondent also claims that her surrender to the U.S.A. would violate her right not to be subjected to inhuman and degrading treatment due to the substandard medical and psychiatric treatments or lack thereof available in U.S. detention facilities.

6.2 As the facts upon which these claims are based are to some extent intertwined, being based upon the respondent's mental ill-health and her relationship with her daughter, it is appropriate to deal the facts together. The Court notes that the respondent has not sworn an affidavit, except an affidavit filed during the course of the bail proceedings. Instead, she relies upon affidavits of her brother and sister in law and her medical personnel to set out her personal and medical history. This is not objected to by the Attorney General. Some of her medical records and earlier medical reports have been seen by the medical personnel who have compiled reports on her for these proceedings. Many of the details that she relies upon concerning her personal life are supported by these original records or by the affidavits of her family.

(B) The personal and family circumstances of the respondent

6.3 The evidence establishes that the respondent was the youngest of … children born to F and G. She was born on … and is now aged .. years. She was raised in Co. ... There is a significant age gap of about 7 years between the respondent and her next sibling in age. The respondent says that she was not close to her family growing up. There appears to have been tensions within the family home. Her brother C left home at about fifteen years of age at a time when the respondent was very young.

6.4 The respondent finished school at about eighteen years of age and left to attend a beauty college. She subsequently got a job and saved money to travel to Australia where her brother C lived. She was away for about a year and on her return she obtained further work and continued to live with her parents. She met I, who was co-accused of these offences by the U.S. authorities, when she was socialising and he was a doorman at the venue. After a year of texting with him they got involved in a relationship and ultimately she moved in with him. J is about 15 years older than the respondent. The respondent complains of very significant physical and sexual abuse during the course of her relationship with him.

6.5 At some point after January 2006 when her daughter K was born, the respondent moved to Israel with J. She seems to have kept the birth of her daughter from her family. Her brother C only became aware of K's existence when her sister in law met the respondent with her then one year old daughter accidentally in the supermarket. It is difficult to be certain on the evidence before me exactly she married her husband, J, but it may have been in or about 2007. The respondent appears to be a poor historian on dates. It is also unclear when precisely she moved to Tel Aviv in Israel to join him there as it is variously stated as 2008 and 2009. She seems to have moved from Tel Aviv to London in or about 2009/2010 with her daughter. J paid for everything for her in the United Kingdom. She lived there for about two years. He moved to Johannesburg and the respondent and K visited there twice for a week on each occasion.

6.6 In September, 2012 she was arrested in London in respect of this matter. Her brother Bernard flew over from Ireland. She spent two weeks in Holloway Prison, but was released when bail was set at Â£250,000 sterling and her brother C, and his wife D put up this bail money. She had an electronic tag, had to report to the police every morning and was on a curfew. She got a job working in a restaurant and during that time she rented a home with K in the Essex area. Over time her bail conditions were relaxed.

6.7 The respondent told her psychologist Dr. Lambe, that she was given three days to sort out her arrangements before her extradition to the U.S. was due to take place. She

said she had a breakdown and that she told her boss who said that they would look after K until a family member came. In her application for bail to the High Court, she averred that the prospect of immediate separation had caused her to panic. She decided to return home to Ireland with the tag still on her. She took a taxi from Dublin to Roundwood but was scared to visit her family. She got in touch with a solicitor and spent a night in St. Vincent's Hospital and was later admitted to Newcastle Hospital for psychiatric treatment. She was then arrested by An Garda Síochána in respect of this extradition request on the 13th day of July 2015.

6.8 The respondent gave her medical professionals a history of sexual abuse perpetrated upon her while she was in school. She also claims that she was in an extremely physically, emotionally and sexually abusive relationship with J. At least some of that was discussed with her treating doctors in or about the time of the complained abuse e.g. there is a referral letter from her G.P. for psychiatric assessment in 2006 which records her complaining of rape by her partner and that the G.P.'s "examinations of this lady confirmed this.". Amongst other matters, she has more recently told her medical professionals that she had complained to the police in Tel Aviv on three occasions because of physical abuse.

6.9 Following her remand in custody to the Dóchas centre, it is established by the medical evidence of Dr. Ronan Mullaney, consultant forensic psychiatrist of the Central Mental Hospital in Dundrum, that she was markedly anxious and finding it difficult to adjust. She was diagnosed with depressive symptoms and adjustment disorder on committal. She was commenced on medication to which she demonstrated some response over the initial period. It appears from the evidence of Dr. Mullaney that, following a meeting with her legal advisors on 11th January, 2016, the respondent was dismayed at being informed that she would be liable to a custodial sentence of many decades if convicted of the above charges on extradition to the United States of America. The respondent attempted to kill herself later that evening. It is not appropriate to detail her method but, it is the doctor's opinion that if not for a particular act occurring, it is very likely that the respondent would have been successful in completing her suicide attempt. She had prepared extensive suicide notes for her family members including her brother, sister in law, her parents and her daughter K.

6.10 The evidence establishes that following her suicide attempt she displayed little remorse, continued to state she was ambivalent about remaining alive and that she continued to entertain thoughts of suicide. She was placed on a specially designed regimen within the prison designed to allow continual supervision while facilitating supervised time in the gym and kitchens as these were activities she had previously enjoyed. Her medication was reviewed and maximised by combining several different anti-depressant agents. She was referred to the psychology service.

6.11 The evidence also shows that in March, 2016 she took an overdose of a number of tablets which she had been storing. The psychiatrist states that although this was unlikely to result in fatality due to the dose swallowed, the respondent believed that such an overdose would be fatal. She had written a suicide note to her daughter. On review she said she was pessimistic and hopeless and could not tolerate the idea of being separated from her daughter if extradited. On two occasions in April and May, 2016, she impulsively swallowed batteries. She has been diagnosed by the psychiatrist as having a recurrent depressive disorder and borderline personality disorder. She is now on intensive treatment in Dóchas Prison which will be further referred to below.

6.12 It appears that the respondent has a past psychiatric history. In 2006 her GP in Wicklow diagnosed her with clinical depression and commenced on Citalopram once daily. Later that year she was referred for psychiatric assessment as she had appeared in surgery in a very anxious state complaining of lower abdominal and vaginal pain

following an alleged rape by her then partner J. She was noted as very underweight at that time. She was also referred for counselling in January, 2008 as her relationship with her husband was deteriorating.

6.13 The respondent has told the doctors that she was referred for counselling by her G.P. in Israel and had also been provided with anti-depressants and anti-anxiety medication. During the period 2013 and 2014 she had attended an occupational health specialist whilst on bail in London and her medications had been switched. She was also recorded as suffering from severe depression. It appears that she was admitted to Newcastle Hospital in July, 2015 (after she fled London) with acute distress in the context of psycho-social stresses. The respondent has reported to Dr. Mullaney that she from 2005 onwards she has regularly self-harmed, usually by cutting her forearms with Stanley blades.

6.14 The respondent's daughter K was taken to Ireland by the respondent's sister E in the wake of the respondent's arrest in this jurisdiction. The day to day caring for K was at that stage shared between the respondent's sister E and her brother C and his wife D. For the most part, she stayed with C and D over the weekend and with E during the week. Due to E's work commitments, the weekly care arrangements had to cease and since about Easter, 2016, K has been residing with C and D. Even prior to that, being pricked up from school by different persons was having a negative effect upon K.

6.15 For their own personal reasons, C and D believe that they are not appropriate guardians for K. Nonetheless they have continued to care for her. No other siblings are either willing or able to take care of K. The respondent's parents were too old to take care of their granddaughter. Since the commencement of these proceedings, the respondent's mother has died. Each of the other members of the respondent's family had made it clear that they were unwilling or unable to care for K. The respondent's solicitor has sworn in affidavit that she wrote to the respondent's siblings, Bernard, E and H in respect of the respondent and her daughter. She received a reply from solicitors on behalf of Jane who said that given the financial and personal situation of their client she was not in a position to contribute in any meaningful way to assist with the bringing up of K. She did not receive a reply from the other two siblings.

6.16 D set out the details of the frequent contact that K has with her mother. She outlined that K was becoming aware that the respondent was unlikely to be released from prison shortly and that she was observant of the deterioration in the respondent's mood during visits. As time went on she was becoming increasingly withdrawn after visits with the respondent. In the morning times they had to change her bed sheets because she is bed wetting. She believed that the deterioration in K was as a direct result for apprehension that her separation from her mother will continue which is a trauma that affects her deeply.

6.17 C and D say that they are acting as carers for K owing to circumstances where it was never their intention to become a long term guardian to K notwithstanding their affection for her. They are of the belief that the respondent is the only person capable of providing the care that she needs. C states in his affidavit that although he loves his niece very much he does not believe that he is an appropriate guardian to her. He says that the deterioration in K is attributable almost exclusively to her separation from her mother and this will worsen to the point of crisis if the separation is extended. Both C and D say that they made a decision not to have children. It was based upon the nature of their work which required frequent travel for long periods throughout the year and on their own lifestyle preferences.

6.18 According to the respondent, she has been the only constant and sustained presence throughout her daughter's life. The relationship has remained strong through

daily contact and regular visits while the respondent has been in custody awaiting this decision. The more recent position is that due to a change in K's attitude towards attending at the prison, the visits to her mother have stopped. This will be addressed further below.

6.19 A psychological assessment was carried out on K for use in these proceedings. Sheila Hawkins, chartered registered psychologist, is of the view that K presented a very vulnerable and lonely child whose emotional development has been compromised by recurring trauma in her early years and separation from her mother due to imprisonment. In the final of her two reports dated 31st May, 2016, made in the wake of the death of K's grandmother, Ms. Hawkins concludes that "K, because of her vulnerability in life experiences to date including yet another upheaval in her care arrangements, will more than likely by irreparably damaged by further loss as would be the situation should her mother be removed from this jurisdiction."

6.20 Although C and D run their own business, they are of limited means and have averred that visiting the U.S. to bring K to visit her mother would place great financial strain upon them. They also refer to the difficulties in visiting given the location of any proposed prison in which the respondent would be held in the U.S. as well as the U.S. rules and regulations on visiting.

6.21 The respondent submits that her extradition to the U.S. would impose a separation from her mother that would irreparably damage K with a long lasting impact on her psychological health. Ms. Sheila Hawkins, the respondent's psychological expert, swore an affidavit dated 22nd June 2016 in which she exhibited a report dated 2 April 2016 and an addendum to that report dated 31 May 2016. She refers thereine to psychological reports undertaken in the U.K. by a Dr. Tom Grange and a Dr. Robin Bennett. These were supplied to her by the respondent's solicitor. These were also made available to Dr. Mullaney as indeed were psychiatric reports of a Dr. Siraj Adam and a psychiatric report dated 4th September, 2015, from Dr. Alisha Dooley a consultant psychiatrist in Newcastle Hospital. These reports were never made available to the court. While this may be sub-optimal for the Court, I am satisfied that their absence does not taint the professional evidence of Ms. Hawkins, who has interviewed K and taken collateral history from members of the respondent's family. Moreover, there is no suggestion that these other medical professionals were other than diligent in their own reports. Ms. Hawkins reports that K's apparent anxiety and her self-reported hostilities directed towards self in the family relations test indicating depression give pause for concern and support a previous hypothesis (Dr. Bennett) that a second separation from her mother would create the potential for a further worsening in K's psychological state.

6.22 Ms. Hawkins says in her struggle to remain in emotional control K may further detach from her emotions and may, as summarised by Dr. Bennett, resort to further maladapted emotional safety measures such as self-harm, alcohol and drug abuse into her adolescent years. Given her current psychological status, her correlational behaviours of enuresis and encopresis, the reported history of early childhood trauma, the loss of her mother is correlated with grief and the evidenced pre-disposition to anxiety and depression as may have been inherited from both her mother and her grandmother, Ms. Hawkins concludes that K. is a child at serious risk. Ms. Hawkins says it is difficult to understand how this risk can be mitigated should separation from her mother continue to be the situation without the prospect of daily phone conversation and weekly visits with her mother. Ms. Hawkins has said that should reunification not take place K. would be best supported in consistent, nurturing and safe care environment which would need to be supported by Tusla, the Child and Family Agency and CAMHS "the Child and Adolescent Mental Health Services". To this end Ms. Hawkins said she would make referral to those agencies.

6.23 An issue arose about Ms. Hawkins evidence as she refers to a number of various dates and implies there was a further report I will note repeat the objections in detail but it seems Ms. Hawkins may have mixed up dates as she refers to the May report being an addendum to the confidential report dated 19th January 2016 and then refers to the 16th January 2016. She says this is an addendum however to her earlier report. While this should have been cleared up, I do not consider Ms. Hawkins's evidence to be tainted by this lack of clarity. She has sworn an affidavit and is at pain of prosecution for perjury should she not be telling the truth. I have no basis for rejecting her evidence and disbelieving her professional findings and opinions. Finally, the Attorney General never sought to cross-examine Ms. Hawkins or indeed any witness to these proceedings and never sought to have either the respondent or K. professionally examined.

6.24 Ms. Hawkins states that since the recent death of the maternal grandmother it had been arranged that K. would reside exclusively with C and D. It appears at the time that she wrote that report that K. was in the south of …. with C and D. Ms. Hawkins in this report concentrates on the decision of C and D not to have children and their difficulties and lack of enthusiasm for the position they find themselves in. Ms. Hawkins is of the view that it was difficult to understand how the new arrangement could be beneficial to K. While she says that C and D have demonstrated the best of intentions and want to do the best they can for K, however given their lifestyle they are not really in a position to provide consistent emotional support to their niece. She is of the view that K continues to be an extremely vulnerable child who continues to grieve her mother's absence and now has the added burden of grieving her grandmother with whom she spends most weekends in recent times and against whom she has expressed some negative emotion. She says that it is possible that because of express negativity she is now experiencing some guilt at the demise of a grandmother. K, as reported to her by D, continues to rely on her mother and continues to be buoyed by expectation of her return home.

6.25 Dr. Kevin Lamb, psychologist, carried out a psychological evaluation on the respondent. He also observed her interplay with her child. He notes that the disruptions to the secure psychological well being of K in the event of extradition have been well documented. He says that the psychological risks associated with a repeated and prolonged severance would, in his opinion, be marked possibly leading to personality disturbance in K. during her adolescence and early adult life.

6.26 During the course of the hearing in November 2016, the Court queried whether K was receiving psychological support as had been strongly indicated by Ms. Hawkins. The Court was then furnished with an affidavit of D in which she stated that she sought the advice of Dr. Sarah O'Byrne clinical psychologist in December, 2015 and was advised that K. required long term therapeutic intervention but that this should commence after these proceedings concluded which at that time was expected to be in February, 2016. In circumstances where the proceedings remained ongoing, she said that she first met with Jennifer Smith in May, 2016 with K. on an informal basis and formal counselling began with Jennifer Smith for K. in August, 2016 and as of November, 2016 K. had attended for nine sessions. No further report was given in respect of the progression of the counselling. That may well be appropriate as part of the benefit of the counselling process may lie in its confidentiality.

6.27 In his report, exhibited in his affidavit of the 20th July, 2016, Dr. Mullaney repeated the personal, medical and psychiatric history that he had outlined in previous reports. Of particular note is that he says from March 2016, up to the time of his report the respondent was maintained on Special Observations for an unusually extended period due to the sustained risk of self-harm which she poses. He says that "[c]areful development of a supportive plan for the respondent in order to reduce her distress and the associated risk of self-harm has involved nursing staff, the prison governor, the prison teaching and recreation staff, the prison psychology service and the psychiatric

in-reach team."

6.28 The respondent was noted at times to be benefitting from attending a counselling psychologist on a weekly basis and that with support she was developing more adaptive coping skills. She was deemed at a chronically elevated risk of self-harm or attempted suicide. She was being treated with a combination of Olanzapine, Fluoxetine and Mirtazapine medications. Stressors at times included her court cases being put back. A major stressor was that her daughter informed her that she did not want to continue with weekly visits to the prison, as she found the prison visits to be very upsetting. She was experiencing significant urges to self-harm but her placement on special observations had a protective effect.

6.29 There were a number of delays throughout these proceedings as this Court sought further information as outlined below. Overall however, the finalisation of these proceedings were delayed as the Supreme Court decision was awaited in the case of *Attorney General v Davis* . The Supreme Court had given leave to appeal on three grounds of general public importance. The two issues of relevance were:

> (a) Whether the State is obliged to protect vulnerable persons suffering from mental illness under the Constitution within the context of an extradition application and the circumstances under which that duty is engaged so that an extradition request should not be granted [Issue Two];
>
> (b) Whether in this case the condition of Gary Davis is so severe in fact that, as a matter of law, he may not be extradited to the United States of America [Issue Three]."

6.30 After the Supreme Court gave its decision, these proceedings were listed for further hearing. The submissions on that aspect were not extensive because it was recognised that the Supreme Court had endorsed the previous approach of the courts with respect to mental illness and that the Davis case was one that turned upon its own facts. Of note is the following conclusion of the Supreme Court (McKechnie J):

> *"the State is obliged under the Constitution to protect vulnerable persons suffering from mental illness within the context of an extradition application; indeed such duty extends to all persons, not just those suffering from mental illness. It is for the proposed extraditee to establish by evidence that there are substantial grounds for believing that if he were extradited to the requesting country he would be exposed to a real risk of being subjected to treatment contrary to Article 3 ECHR or equivalent fundamental rights under the Constitution".*

6.31 At that hearing, the respondent relied on an updated report from Dr. Mullaney. As indicated by him previously, the delays throughout the proceedings have been significant stressors. She has discussed her responses to the court cases "going against her". She was very distressed about failing her daughter at a significant time in her daughter's life. She discussed her suicidal thoughts with the mental health nurse but that she wanted to be there for her daughter.

6.32 In January 2018 she began to restrict her food intake. She reported increasing ruminations and a sense of hopelessness. She was commenced on Amitryptiline, another anti-depressant, in addition to the medication she was already taking. She continued to lose weight throughout April, May and June 2018. She knew she was underweight but felt she had some control over her situation by continuing her food restriction. She has been prescribed Ensure and Multivitamins.

6.33 When examined in July 2018 her hair was unkempt and unwashed. She had

restricted affect and presented as anxious and preoccupied with her court hearing. She did not present objectively as suffering from a depressed mood but was notably anxious. Although she had a reasonable insight into her mental health difficulties, she was unwilling to change her eating habits or consider re-engaging with general prison activities.

6.34 She was diagnosed with a number of comorbid mental health conditions:

A. Recurrent Depressive Disorder

B. Borderline Personality Disorder (BPD)

C. Eating Disorder (not otherwise specified) (NOS)

6.35 In relation to her Recurrent Depressive Disorder the consultant says she has required aggressive treatment with multiple combined antidepressants as well as considerable psychotherapeutic interventions to manage her depressive symptoms.

6.36 In relation to her BPD, she fulfils multiple descriptive criteria for this disorder including mood swings, impulsivity, unstable self-image, intense negative affect, fears of abandonment and frantic efforts to avoid same as well as self-harm and frequent suicidal ideation. There is a synergy between her depressive disorder and her personality disorder such that when distressed and clinically depressed the severity of her symptoms of both conditions and her consequent risk of harm to herself are very significantly increased.

6.37 Specific causes of BPD have not been identified. Although the processes are debatable it appears likely that BPD develops through the accumulation and interaction of multiple factors, including temperament, childhood and adolescent experiences and other environmental factors. One common factor in people with BPD is a history of traumatic events during childhood and adolescence, in particular physical, sexual and emotional abuse, neglect and hostile conflict. Suicide is a particular risk in BPD with up to one in 10 people with BPD committing suicide and the impact of this disorder in individuals is exacerbated by comorbid conditions such as depression.

6.38 In relation to the Eating Disorder NOS, this is a category reserved for those that do not meet diagnostic criteria for either one or the two other eating disorders recognised; anorexia nervosa and bulimia nervosa. There is evidence that the severity of psychopathology and degree of secondary psychosocial impairment in those with eating disorder NOS are comparable to those seen in patients with anorexia nervosa or bulimia nervosa.

6.39 Dr. Mullaney states that she is receiving intensive psychotic and psychological treatment, which has been designed to ameliorate her immediate suffering, improve her coping skills and reduce her risk of self-harm and suicide. These are outlined extensively and in brief are as follows:

a) Weekly individual psychotherapy

b) Regular review of and prescription of individualized psychopharmacological treatment

c) Placement on special observations

d) Placement within the Healthcare Unit of the Dóchas centre at night

e) Facilitation of attendance at school activities and the gym within the prison despite being managed in the Healthcare unit and on a regime of Special Observations

f) Facilitation of contact with her family. In particular, she has regular phone contact with her daughter for at least 30 minutes each evening.

(C) Lengthy pre-trial detention and lengthy sentence of imprisonment

6.40 As the issue of sentence is relevant to the Article 8 proceedings it is necessary to refer to two issues that were raised in the context of fair trial rights but also inhuman and degrading treatment. In relation to the question of lengthy pre-trial detention, the respondent relied on her U.S. court appointed attorney, a Mr. James W. Price. The complaint was that the respondent faces a likely delay of two to four years in pre-trial detention waiting for the transfer of her co-accused and ex-husband J. As the respondent now submits that J is dead, this argument falls away.

6.41 The respondent has also claimed that the sentence she would receive is disproportionate to the offence and is of itself inhuman and degrading. The respondent relied upon the evidence of Mr. Joel A. Sickler, a criminologist working in the field of sentencing and corrections for more than thirty years and the current head of the Justice Advocacy Group LLC, a consortium of criminal justice professionals based in Alexandria, Virginia. Mr. Sicklercalculates the sentence that might be imposed on this respondent. At one point, he says she is facing a sentence of life imprisonment but this is clearly incorrect as the maximum penalties do not provide for that. He moves away from that assertion later in his affidavit. He refers to the U.S. Federal Sentencing Guidelines which refer to guideline sentences on the basis of a point system. The points calculated in some cases point to a guideline sentence in excess of the maximum permitted, however it is clear that the statutory maximum takes precedent over a guideline calculation.

6.42 Mr. Sickler gives the worst case scenario in which she is held to be a leader, that the conspiracy is viewed as of huge breath and that there is no plea of guilty or co-operation. On that basis, he calculates the sentence she will receive as at, or near, 20 years. She would be entitled to 15% of the time served as a "good time" reduction.

6.43 In my view, there are no reasonable grounds for the claim that the risk of a lengthy custodial sentence in the region of 20 years, imposed in respect of serious offences of drug trafficking (of medicinal products) and money laundering would, *in and of itself* , amount to inhuman and degrading treatment. Irish Courts may not impose the same length of sentence for these particular offences, but that is not a determination that to impose such a sentence would amount to inhuman and degrading treatment. In short, because Ireland would not give such a sentence, it cannot be said that a lengthy sentence for these types of offences would "offend human dignity." It is noteworthy that the respondent has not pointed to a single decision of the courts in this jurisdiction, in other jurisdictions or of any international human rights body that would support the contention that such a lengthy sentence for this type of offence would be inhuman and degrading. This point of objection is rejected.

(D) The issue of US prison conditions

6.44 The respondent placed a large amount of evidence before the Court which related to the question of whether there were substantial grounds to believe she was at real risk of being subjected to inhuman and degrading treatment in custody in the U.S.A. should

she be extradited. Much of this evidence centred on her particular personal and family circumstances and how these might be affected by extradition to and custody in the United States of America. This evidence is also relevant to the question of whether her extradition will violate the right to respect for her private and family life. Furthermore, the manner in which this evidence emerged explains the delays in the case and the ongoing impact on the respondent.

The Respondent's evidence

6.45 In his wide ranging affidavit, Mr. Sickler states amongst also matters, that the respondent will not receive the type of medical care that she is currently receiving should she be remanded into the custody of the bureau of prisons. He says that the US Bureau of Prisons (BOP) has often unable or unwilling to provide appropriate, specialised and individualised health care for inmates such as the respondent whose combination of medical conditions is complex and serious. Mr. Sickler states that her contact visits will be limited with her family and that in pre-trial detention, should she be placed on a suicide watch for any period of time in the jail facilities that she will be completely denied any contact by phone or otherwise with her family during that period.

6.46 The submissions of the respondent under this heading commenced with the statement that the evidence "establishes that the quality of medical care necessary for the respondent provided at B.O.P. affiliated institutions, whether pre-trial and U.S. marshal governed or a B.O.P. institutional compound, is highly insufficient with a poor delivery record of the type of specialised psychological care required by the respondent." The respondent submitted that the evidence indicates that it will be months before she receives the correct medical treatment and that ultimately electro-convulsive treatment as a more likely treatment than psychotherapy. The respondent complained that an extended imprisonment will result in her being placed in a facility beyond her actual security needs purely because of her citizenship and fragile mental state. Mr. Sickler stated that she would be held in a barred room "dangerously unequipped to battle her myriad clinical issues. According to him, the effect on her psyche could be devastating, even deadly." There were also complaints that during her transportation process from Ireland to the U.S. it would be highly traumatic including her being restrained and shackled during the escort process with possible leg irons and a body chain being additionally utilised.

6.47 In oral submissions on behalf of the respondent, particular reference was made to para. 97 of Mr. Sickler's affidavit in which he referred to the restrictions on her should she be placed on suicide watch in the jail facilities pre-trial. Jail facilities are to be distinguished from the B.O.P. facilities as the B.O.P. generally only takes custody of a prisoner after they have been sentenced. The contents of para 97 featured heavily throughout the case and it is necessary to quote it in full:

> *"97. However, what is crucial to note is that should [B] be placed on "Suicide Watch" for any period of time - according to jail official at these three facilities - her access to phones and any contact with her family will be completely denied until staff feels she is one again stable enough mentally to return to general lock-up. Given [B's] personal history, medical diagnosis, and the real expectation of what she faces in this experience if brought to the U.S. - once can reasonably expect she will unfortunately suffer periods of time completely cut off from the outside world (especially from her young daughter as thoroughly unqualified and poorly trained corrections staff in local KY or TN county jails decide [B's] status. This will preclude her from communicating with family for significant periods of time. This represents yet another unnecessary and avoidable instance of suffering that awaits [B] when (if) she is initially brought to the U.S."*

6.48 On a number of occasions, counsel for the respondent referred to the contents of

this paragraph as one of enormous concern given what was known of this respondent's medical and personal circumstances. Indeed, in his submission, without taking from the other facts he was relying on, this was the paragraph that on its own established a real risk of the respondent being subjected to inhuman and degrading treatment. He referred, quite correctly, to the fact that this paragraph had not been directly addressed in any of the affidavits of the US personnel which were relied upon by the Attorney General.

6.49 The Court also had a concern about the stark picture of isolation for this respondent who would be a vulnerable mentally ill prisoner in these jails. The Court, of its own motion, as is permitted under the Supreme Court decision in the case of *Minister for Justice, Equality and Law Reform v. Rettinger* [2010] IESC 45, gave the Attorney General the opportunity to address this if they wished through evidence of the U.S. officials. Again this was deeply unfortunate as it should have been addressed at the outset. I gave that direction on the 15th December, 2016. Further affidavits were then sworn.

6.50 Mr. Jeff Dill, Supervisory Deputy United States Marshal for the district office of the US Marshal Service (U.S.M.S.) in Nashville, Tennessee, who had sworn an earlier affidavit which will be discussed in more detail below, specifically replied to Mr. Sickler's claim that she would not have access to telephones or contact with her family while on suicide watch by saying it was incorrect. He went on to say:

> *"[n]otable, on December 29, 2016, I spoke to representatives of each of the three facilities and none of the personnel I spoke with had a recollection of speaking with Mr. Sickler. For example, when I spoke with Jason Woosley, the primary Jailor at the Grayson Country Detention Center, he reported that none of his staff told him of any contact from Mr. Sickler. Regarding detainees on suicide watch, Mr. Woosley also told me that detainees on suicide watch at the Grayson County facility do have access to telephones and family visitation. Staff members I spoke with at the other two facilities similarly reported that their facilities also allow telephone usage and family visitation for detainees placed on suicide watch. All three of these facilities have policies and procedures vetted and enforced by their respective state governments governing the usage of suicide watch for detainees. As an example, the facility in Robertson County, Tennessee, has a psychiatric nurse available for evaluation of detainees. In Kentucky, the policies and procedures of the Kentucky Department of Corrections mandates the care to the given to inmates/detainees on suicide precautions, and the Kentucky Jail Mental Health Crisis Network provides services to jails that focuses on "suicide assessment and risk management for inmates." The use of trained, licensed medical staff and mandated precautions ensures procedures are in place to prevent suicide and provide mental health support for detainees. These facts contradict Mr. Sickler's statement that "unqualified and poorly trained corrections staff would decide [B's] status."*

6.51 Mr. Sicker's response when asked to clarify statements made in paragraph 97 was to "express my sincere apologies to the Court for not specifically expanding more on the comparative nature of allowed visitations and communications by inmates within this environment - and I regret any potential misperception regarding the original statement." He then went on to "briefly clarify that paragraph's information."

6.52 Mr. Sickler then referred to his experience of B.O.P. federal prison and said that being placed on suicide watch can practically translate to isolation for a certain period until it is decided to open communication privileges once again post initial review and assessment. He said "this occurs in a sense completely denied at the outset as a matter of practical application as opposed to policy". He said paragraph 97 was provided with

an understanding of the federal prison system's use of "suicide watch". He said that in the federal prison, inmates are indeed held in isolation (the Special Housing Unit) and access to a phone is very limited (once call per week, sometimes one per month as the routine. "Paragraph 97 was meant to reflect the reality of the protocol and process - in addition to policy expectations and directive. He said the wording should have ideally further denoted any possible complete isolation as initial - yet importantly still carrying potentially devastating consequences for the fragile in need of medical attention."

6.53 Later in his affidavit he referred to what he called the practical reality "which is affected by logistical restriction, does not match the boilerplate responses of facility administration expressing the "intent" of policy. " He said "[B] will have phone access and visitation with family while on any special housing or suicide watch status is that is the case, just not in any immediate sense on being first transferred to solitary; or at all in a way (while there) that the general population of a facility would find routine, constructive and healthy."

6.54 Mr. Sickler then went on to say that "Mr. Dill is correct (as are Grayson staff we've spoken with too) in saying B will have access to her family and visitation, it's the manner of when and how that remains always somewhat unpredictable in these circumstances - and the dedication to policy implementation that exists in the specific situation - and then the realities as clearly noted in my original affidavit which still persist - those stark realities as examples presented in paragraphs 93,94, and 95 of my 5/31/16 affidavit. So regardless of good intention and/or policy - and even with the three particular facilities we're discussing - the reality remains present and often despite the pronouncements otherwise." He then referred to a report on US Immigrant Detention Centers which are not or so it appears B.O.P. institutions.

6.55 In my view, paragraph 97 had not presented an entirely accurate picture of what the situation was with regard to "suicide watch". It resulted in the Court having to seek further information and consequential delay. The statement therein has also be relied upon by the respondent's medical doctor in commenting on the situation.

6.56 In his earlier affidavit, a major complaint of Mr. Sickler was that the B.O.P. would merely give general answers and would not address the specific needs of this respondent. Mr. Sickler also placed reliance upon the fact that the B.O.P. carried out a formulary procedure with respect to treating mental illness. Mr. Sickler spoke of the assessment process that would take place and in particular if a depressive disorder was diagnosed she would be commenced upon fluoxetine (one of the medications on which she is on at present) and if no response the dose would be maximised and she would be given adequate time for medication to be effective. If there was no response, there would be a switch to another SSRI to include mirtazapine (which she is on at present) and that if there was no response combination therapy with two medications not in the same class would be used.

6.57 When the Court put the matter back for further information from the U.S. authorities concerning the statement of Mr. Sickler about suicide watch, the Court gave the respondent an opportunity to put in further medical evidence as to whether this type of denial of family contact would have serious effects on this particular respondent in light of her particular state of ill health, and any other information concerning the effect on her health. Submissions had been made by the Attorney General as to the lack of evidence about the medical effect of the treatment protocols in the U.S. jails and prisons.

Further medical evidence as to the effect of extradition on the respondent

6.58 Dr. Mullaney in a report dated 8th February 2017, outlined the trio of medicines

that she was on at present as well as the fact that she is engaging in weekly individual psycho-therapy sessions and is reviewed twice weekly. She was also on a special regime of fifteen minute observations within the prison. Dr. Mullaney said that if the treatment and resources are not available to her she would require continual management in isolation and segregation to manage her risk of suicide. This segregation would be required indefinitely if she does not receive intensive treatment and as such it would be at the expense of her quality of life.

6.59 Dr. Mullaney was apparently given Mr. Sickler's first declaration but not his second. It appears that he did not have access to any of the information provided by the U.S. authorities in their declarations. This penultimate report of Dr. Mullaney gave some further detail of B' progression in Dóchas and her medical treatment there. He explained her diagnosis of BPD in greater detail. He said that she fulfils the multiple descriptive criteria for the disorder including "mood swings, impulsivity, unstable self-image, intense negative affect, fears of abandonment and frantic efforts to avoid same as well as self-harm and frequent suicidal ideation." He states that in the respondent's case "there is a synergy between her depressive disorder and her personality disorder such that when distressed and in Borderline crisis *and* clinically depressed the severity of the symptoms of both conditions and her consequent risk of harm to herself are very significantly increased." (emphasis in original).

6.60 Dr. Mullaney stated that she is receiving intensive psychiatric and psychological treatment within the Dóchas centre. "Such treatment has been designed to ameliorate her immediate suffering, improve her coping skill and reduce her risk of self-arm and suicide." He lists her treatment. With respect to her medication he says that she is on a non-routine combination of two antidepressants and a moderate dose of an antipsychotic with antidepressant and mood stabilising properties. This medication regimen has been carefully tailored over several months according to close observation of tolerability and clinical response. She is reviewed at least weekly by the psychiatry in-reach team to the Dóchas Centre.

6.61 In his view, the single most important protective factor for the respondent in reducing her risk of self-harm or completed suicide has been her contact with her daughter both daily by telephone and weekly on prison visits. He says that as he understands it there is a likelihood that following any decision to extradite her to the U.S.A. she would experience reduction or loss in the frequency and quality of her contacts with her daughter. It is entirely foreseeable that her mental state would deteriorate significantly in the event of any sustained or prolonged loss of physical and verbal contact with her daughter and family.

6.62 Dr. Mullaney says that her initial depressive symptoms on entering Dóchas did respond to co-ordinated pharmacological, environmental and psychological interventions, however such a tailored suite of interventions was unusual and highly resource intensive. "It is likely that any decision to extradite [B], especially when her expectation is that she is likely to be subject to an unpredictable and potentially prolonged period of incarceration on her extradition, together with being separated from her family, especially her daughter, would place [B] at risk of a further relapse in her depressive disorder."

6.63 Dr. Mullaney concludes that: "[w]hile the future is inherently unpredictable with any exactness it is notable that [B] has responded to the possibility of a prolonged separation from her daughter with a consistent pattern of suicidal thoughts and has engaged in two serious and potentially lethal acts of self-harm while in custody over the last 18 months. Thus it is my opinion that [B's] risk of attempted and completed suicide would increase significantly upon her extradition." As outlined previously, Dr. Mullaney gave an updated report in July 2018. Her intensive treatment has continued, she is on

an additional anti-depressant and she now has an Eating Disorder.

The Attorney General's evidence

6.64 Without being under an obligation to provide any further evidence, the Attorney General has relied upon the declaration of Dr. Robert Sarrazin who is the chief of psychiatry at the United States Medical Center for Federal Prisoners since March, 2004 and an employee of the B.O.P. since November, 2002. In that affidavit he does not specifically refer to individual items of concern as raised by Mr. Sickler. Instead he says that his affidavit addresses the potential post sentence confinement of the respondent should she be convicted of a federal crime in the United States of America.

6.65 Dr. Sarrazin sets out the B.O.P.'s mission is to safely, humanely and securely house sentenced inmates for the duration of their sentence. They have promulgated policies to ensure these goals are met and to ensure compliance with the programme statements they have an internal auditing mechanism as well as a third party review and accreditation process. He says furthermore that if inmates were displeased with aspects of the confinement, there were several methods by which they may seek redress including from the judicial system.

6.66 Dr. Sarrazin deals with the process that would apply if the respondent is convicted. It is unnecessary to set out in detail what occurs save to say that various factors are taking into account to determine where should would be housed safely and securely. This would include consideration of mental health.

6.67 Dr. Sarrazin states that the B.O.P. fully understands its constitutional obligation to provide adequate health care to its inmate population. He describes four care levels to which inmates are assigned to ensure they are matched with the institution best suited to meet their individual medical and indeed mental health needs. There are some specifically medically orientated facilities, which are accredited by the Joint Commission on Accreditation for Health Care Organisation which sets the medical, surgical and psychiatric standards for hospitals nationwide. He says that each B.O.P. institution typically employs a physician and several mid-level providers who usually are able to address the medical needs of most inmates. He says that should the respondent have medical concerns that the B.O.P. is not able to handle the B.O.P. will provide her with access to local medical providers and specialists as necessary. He says that with respect to mental health treatment inmates are screened upon arrival and are connected with mental health professionals who provide them with care consistent with the above mentioned policies. He states that psychological and psychiatric services are available as deemed appropriate to each inmate in the B.O.P.'s custody.

6.68 In addition, many facilities have specific psychological treatment programmes, one of which is the resolve programme. The programme was developed for female inmates who have experienced traumatic life events that have, in some cases contributed to the development mental illnesses such as post-traumatic stress disorder and borderline personality disorder. In addition, each facility has medical staff to prescribe any psychotropic medication which may be indicated. Many institutions also have bureau staff psychiatrists or contract psychiatrists available for consultation. Each institution also has the availability of communicating with bureau psychiatrists telephonically and also by telemedicine. Many facilities have scheduled tele-psychiatry clinics and all have the capability of having tele-psychiatry consultations on an as needed basis. He also says that Federal Medical Centre Carswell has a comprehensive mental health programme including a psychiatric in patient programme and is exclusively female.

6.69 With regard to any inmate who may be suicidal the B.O.P. has also implemented a suicide prevention protocol. This ensures that B.O.P. staff work cooperatively to identify

and manage suicidal inmates in a timely and responsible fashion. Staff are trained in suicide prevention. Each institution has established suicide watch procedures whereby an inmate may be relocated to an area in the institution where staff are better able to monitor, access and protect the suicidal inmate.

6.70 In his original declaration, Mr. Jeff Dill of the U.S.M.S., declared that the U.S.M.S. are responsible for transporting and maintaining custody of federal prisoners from the time of their arrest by a marshal or their remand to the U.S.M.S.. by the court, until they are (a) committed by order of the court to the custody of the Attorney General to serve their sentence, or (b) otherwise released from custody by order of the courts, or (c) returned to the custody of the U.S. Parole Commission or the B.O.P.. Prisoners in the U.S.M.S. Middle District of Tennessee are housed in pre-trial custody in one of the four different contracted county jails which the district utilizes for prisoner housing. He stated that he reviewed the current detention facility inspection reports, all completed in August 2015, of the four primary detention facilities used to house federal prisoners. According to the inspection reports, all four of the facilities used to house district federal prisoners are in compliance with applicable standards, including those related to prisoner suicide prevention. He identified three of those four facilities as places where the respondent might be housed.

6.71 He outlines that during the processing of a new arrest, U.S.M.S. personnel gather medical and mental health data in a structured manner from the arrestee and additional information may also be gather from the arresting agent. The information, including any information regarding suicide, is forwarded via a report to the assigned detention facility. He avers that these detention facilities are in compliance with stands related to medical, dental and mental health and have access to routine, chronic and emergency health services. He sets out details of the amenities available to prisoners therein in particular with regard to family contact and medical facilities.

6.72 In his second declaration, Mr. Dill referred to the 2016 Inspection reports. The respondent raised an issue as to reliance on these documents because these documents had not been produced for inspection by the Attorney General. The Court ruled that it was not necessary to so produce them. A submission that the lack of production tainted the rest of his evidence was also rejected.

6.73 Mr. Dill also gave further evidence by way of declaration that Mr. Sicker was incorrect about the transportation of federal prisoners who are taken into custody following foreign extradition proceedings. He states that they are flown into the U.S. with U.S.M.S. escorting personnel by commercial airline and restraints are used in accordance with the airline's polices while on the airplane. Upon arrival and entry clearance, the detainee and escort personnel will immediately fly via commercial aircraft to the charging district. He outlined that a similar plan had been set in place for B's extradition from London which did not take place as she had fled the day before she was due to be transported. He expects a similar procedure to be followed should her extradition be ordered from Ireland.

6.74 The U.S.M.S. Deputy Supervisor, Mr. Dill, stated that if notified of a potential suicide risk, the suicide prevention protocol of the local jail is initiated but he never said what that protocol involved. More particularly when dealing with the inspection of facilities and whether they were in compliance with the U.S.M.S. standards he never said what those standards or policies were.

6.75 Of note is that with respect to Grayson County Detention Centre (G.C.D.C.) all that has been stated is that "for medical care, GCDC has a nurse on staff at all times." There is no indication from him that G.C.D.C. has even a psychiatric nurse on duty or what if any facilities by way of medication and psychotherapy that the respondent would receive

if she was extradited and detained there. It is noted that the evidence of Mr. Sickler was that G.C.D.C. experienced three suicides since 2009 and four since 2008. One of these was a suicide of what must have been a high profile prisoner i.e. a local Police Chief, who was under the supposed watchful eye of the guards and staff there.

6.76 Mr. Dill states that in Kentucky (Grayson County and Warren County are in Kentucky), the Kentucky Department of Corrections mandates the care to be given to inmates/detainees on suicide precautions and the Kentucky Jail Mental Health Crisis Network provides services to jails that focuses on "suicide assessment and risk management for inmates." He says that the use of trained, licensed medical staff and mandated precautions ensures procedures are in place to prevent suicide and provide mental health support for detainees. He stated that with respect to Warren County Jail, there is a medical staff on site 24 hours a day every day and a psychiatric nurse visiting a minimum of two days a week and nurses have access to mental health triage which will visit prisoners as deemed necessary. With regard to the facility in Robertson County, Tennessee all that he has said is that there is a psychiatric nurse available for evaluation of detainees.

6.77 It is of note that these particular policies and procedures were not set out. There was also no specific statement with regard to this respondent's particular needs in the context of her complex needs and in particular her issues regarding family contact.

6.78 Entirely understandably, the Attorney General did not seek to file any further medical evidence where the medical evidence being relied upon by the respondent was that of her treating psychiatrist during her detention in the State's prison.

The Court's request about possible assurances

6.79 As a result of the state of the evidence with respect to detention conditions in the U.S.A., I asked the parties to address the issue of the Court seeking assurances. Eventually this lead to the Court making a determination in March 2017, that it was appropriate for the Court, without making a final conclusion on the evidence, to seek further information from the U.S. authorities. This was for the purpose of determining the issue of whether there was a real risk that the respondent would be subjected to inhuman and degrading treatment on her surrender to the United States of America. I sought information as follows:

> a) Could guarantees be given that the specific medical information contained in Dr. Mullaney's report would be given to the U.S.M.S. who would be dealing with her if extradition was ordered?
>
> b) Could guarantees be given as to the conditions under which she would be transported to the US and to a jail facility?
>
> c) Can the US authorities outline and guarantee minimum treatment she would receive in light of her particular serious mental health concerns?
>
> d) Can the US authorities outline and guarantee minimum family contact she would receive in light of her particular serious mental health concerns?

Further evidence from the USA

6.80 In April 2017 a supplemental affidavit of Brent Hannafan was submitted for consideration of the Court. Mr. Hannafan stated that he had personally spoken with representative of the U.S.M.S. and B.O.P. concerning this Court's concerns as expressed

in the four assurances sought. He said he obtained three additional affidavits.

6.81 Mr. Hannafan averred that he will guarantee that all medical information that the respondent and her counsel provided to the U.S. Department of Justice, whether contained in the reports of Dr. Mullaney or elsewhere, to the USMS. and the Bureau of Prisons. He says that he will do whatever he can to ensure that she receives the best and most human medical care available if she is detained in the Middle District of Tennessee prior to trial. He also said that he would request the B.O.P. that if she is convicted and transported there that she will have as much contact with her family, notably her daughter as is possible under the circumstances.

6.82 Dr. Steven S. Wolf is a doctor and medical officer with the Commissioned Corps of the U.S. Public Health Service detailed to the USMS Prisoner Operations Division in Arlington , Virginia. He outlined that if the respondent were extradited she would be entitled to a detention hearing where a federal magistrate judge would determine whether she should be held in pretrial custody. If detained pretrial and remanded to the U.S.M.S., there would be a determination of which pretrial facility to house her. U.S.M.S. does no operate facilities so prisoners are housed in local jails nationally, which U.S.M.S. has access to by way of an intergovernmental agreement. He outlined that the intake was a three step process that begins with intake of the prisoner by non-medical U.S.M.S. personal in the courthouse cell block, the second step in an intake screening by correctional and health care personal at the detention facility and the third step is the full medical/mental health/dental appraisal at the facility by a licensed health care provided. The initial intake provides for an Alert Notice if the prisoner has a medical condition, including suicidal ideation or any serious mental illness of which the staff are aware. That is provided to the jail that houses the prisoner. This Alert follows the completion of a preliminary screening tool by the U.S.M.S. non-medical personnel.

6.83 As part of steps two and three, upon arrival at a pretrial detention facility, prisoners are initially screened for any medical, mental health or dental concerns by correctional and nursing staff at the facility and subsequently undergo a medical intake examination by aa health care provider. Any identified urgent or chronic health concerns are further evaluated by the facility health care provider or mental health specialist and either addressed inside the facility or if outside specialists or resources are needed referral is made. Facility health care providers (mid-level providers and physicians) may initiate psychiatric medication. Definitive psychiatric medication management is often deferred to the facility or consulting psychiatrist, particularly in complex or severe psychiatric disorders.

6.84 Mr. Stephen Panepinto is employed by the U.S. Department of Justice, U.S.M.S. as Deputy Chief, International Investigations Branch, Investigative Operations Division. He said that he was informed and will assume that she has certain medical conditions including suicidal ideation. He said that his office will determine the appropriate aircraft to use. Regardless of the aircraft chosen she will be restrained and escorted by Deputy United States Marshals who will monitor her behaviour and actions during the flight. Also, prior to the flight, the respondent and her property will be checked for contraband and anything that could harm herself or others. If determined necessary, the U.S.M.S. will ensure a member of the Operational Medical Support Unit accompanies her during transport. They are Emergency Medical Technicians. They can dispense prescriptions medications through oral, subcutaneous and intramuscular means. He says the U.S.M.S. routinely transports prisoners with medical issues and/or mental health concerns including those who are at risk of suicide.

6.85 Ms. Susan Giddings, a Senior Correctional Programs Specialist at the B.O.P. at the Mid-Atlantic Regional Office, described the B.O.P's pretrial detention processes in her declaration. She says that pretrial inmates are to be separated to the extent practicable from persons awaiting or serving sentences or being held in custody pending appeal.

The B.O.P. accepts an individual for commitment as a pretrial inmate provided that the institution has appropriate detentional facilities available for that inmate. Ms. Giddings sets out in her affidavit the procedure for committal. This included verification of commitment papers, searching, photographing and fingerprinting, intake screenings (including telling the inmate that they may have contact with other inmates but providing a Notice of Separation to sign), providing institution guidelines governing telephone calls, provisions for personal hygiene, orientation, opportunity for waiver of right not to work and assignment to an appropriate housing unit.

6.86 The initial screening and assessment takes place within 48 hours of admission. The information for the assessment can come from a variety of sources. An initial assessment of an inmate's medical and mental health status is made during intake and medical staff identified by the Warden must conduct the screening. A reference to a psychologist can be made at this stage. Ms. Giddings says that "[w]hen consistent with institution security and good order, pretrial inmates may be allowed the opportunity to receive support services with convicted inmates. Staff shall ensure that pretrial inmates who do not receive support services with convicted inmates have access to other support services."

6.87 The declaration goes on to say that pretrial inmates are to be provided with the same level of basic medical, psychiatric and psychological care provided to convicted inmates. Competency to waive rights, such as the right to work, may be assessed and she sets out the procedure. This could include commitment to a suitable facility for such assessment. Court notification is required for those on psychiatric medication in accordance with B.O.P. policy. She said that visits are allowed in accordance with B.O.P. policy and local institution guidelines on visiting.

(E) The law relating to the right to respect for personal and family Life

6.88 The respondent relied upon the personal rights provisions of Article 40 of the Constitution in which the State specifically "guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen". Reliance was also placed on Article 41 of the Constitution which safeguards the family. In addition, the respondent objected to extradition based upon the right to respect for private and family life as protected by Article 8 of the European Convention on Human Rights.

6.89 For some considerable time now there has been an acceptance by the courts in this jurisdiction that surrender ought to be prohibited where surrender would amount to an unjustified or disproportionate interference with respect for the personal and family rights of a requested person. The basis of the approach to be taken by the courts has been carefully analysed by the High Court in the cases of *Minister for Justice and Equality v. T.E.* [2013] IEHC 323 and *Minister for Justice and Equality v. R. P.G.* [2013] IEHC 54 in which Edwards J. outlined twenty-two principles on which the court should operate. It is unnecessary to set out those tests in full. It is important to also note that the Supreme Court has, in the case of *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17 clarified that while exceptionality is not the test, it will only be in a truly exceptional case that extradition will be refused. At the heart of all of these principles is that this is a case specific analysis.

6.90 Counsel for both the applicant and the respondent relied upon the 22 principles set out by the High Court (Edward J.) in *T.E.* above. Although that case applied to surrender cases, the principles apply generally to all cases of extradition whether the surrender procedures under the European Arrest Warrant Act of 2003 or the Extradition Act of 1965.

6.91 The respondent relied upon tests one, two, three, four, six, fourteen, seventeen, nineteen and twenty as being the most relevant to this issue. On the other hand, the Attorney General highlighted tests seven, eight, nine, ten and eleven as particularly important as regards the assessment of the public interest.

6.92 The respondent emphasised that it was a question of whether extradition was necessary in a democratic society, there was no requirement of exceptional, the test was proportionality and not exceptionality and that where family rights are rights enjoyed in this country those rights must be weighed. They also submitted that the assessment is case specific; it is a balance of the public interest in the extradition of the particular person against the damage to the private and family life. The respondent submitted that it is also the rights of potentially affected individual that must be weighted in the balance. Great care must be exercised in the examination and the court must assess the extent to which the person or persons might be subjected to particularly injurious, prejudicial or harmful consequences and to weight those in the balance against the public interest in the extradition. The respondent said that the focus had to be on assessing the severity of the consequences of the proposed extradition for the persons affected. Finally, the respondent submitted that the best interests of the child must be a primary consideration, while recognising that they may be outweighed by countervailing factors.

6.93 The Attorney General placed substantial reliance on the fact that in the required balancing exercise the public interest must be properly recognised and duly rated, that the public interest is a factor that must be taken into account in every case, that the weight of the public interest may vary in every case, that no fixed or specific attribution should be assigned to the importance of the public interest in extradition and that it is unwise to approach any evaluation of the degree of weight to be attached to it on the basis of assumptions. The gravity of the crime was relevant and the more grave, the crime the greater the public interest: the opposite effect may not follow in corresponding proportion.

6.94 The law establishes that the public interest in extradition must be balanced against the many variables that can arise in the requested person's family and private life. While the best interests of the child must be a primary consideration, it may be outweighed by countervailing interests. In *R.P.G* ., Edwards J. clarified that, in respect of principle twenty in *T.E.,* the role of the court was to give due regard to the best interests of the child in the balancing exercise that was to be conducted and that point twenty did not indicate a specific weight that had to be attached to the best interests of the child. In *R. P.G.* at para. 170, Edwards J. stated:

"It would clearly be in the best interests of these children that their father should remain in their lives, particularly at this stage in their development, and that he should not be surrendered and this is a consideration to which significant weight must be attached on the private interest side of the scales. However, that non-surrender would be in the children's best interests cannot be regarded as dispositive of the matter. The countervailing public interest considerations must [be] weighed against all private interest considerations including the best interests of the children."

6.95 In the earlier case of *Minister for Justice and Equality v. Ostrowski* [2013] 4 I.R. 206, the Supreme Court at p. 244 acknowledged that some level of interference with rights under Article 8 ECHR is inherent in extradition systems and is not per se disproportionate:

> *"It is an exercise in obviousness to state that any extradition process is most likely to result in arrest, probably or at least possibly in detention, and on a successful application, in one's forced expulsion from the State.*

Therefore, such consequences, apart from degree, are unavoidable, being those which are inherent in the regime itself and without which the process could not be implemented."

6.96 In *Ostrowski* , the appropriateness of balancing the individual's fact-specific claims against the general public interest in securing extradition is summarised cogently at p. 246:

"In summary, where resistance is offered by virtue of a Convention or Constitution right, the court must conduct a fact-specific enquiry into all relevant matters so that a fair balance can be struck between the rights of the public and those of the person in question. Such an exercise is not governed by any predetermined approach or by pre-set formula: it is for the trial judge to decide how to proceed. Once all of the circumstances are properly considered, the end result should accurately reflect the exercise. As part of the process, each of the competing interests must be measured. If appropriately conducted, the interests of the public, underpinned as they are by weighty considerations such as freedom and security, will virtually always merit a value of significance whereas those attaching to an individual will be more variable. The greater the impact to the person, the greater the weight."

6.97 The recent decision of the Supreme Court in *J.A.T No. 2* provides an overview of the significance of the private family rights of individual family members in extradition cases involving minor children. Denham C.J. indicated at para. 80 of her judgment that if the surrender of a person is incompatible with a State's Convention obligations, that such a person shall not be surrendered. Although she referenced s. 37 of the Act of 2003, this also applies to an extradition under the Act of 1965.

"Reflecting the Framework Decision, s. 37 of the Act of 2003, provides that a person shall not be surrendered under this Act if his or her surrender would be incompatible with the State's obligations under the Convention, or the Protocols to the Convention, or would be a contravention of any provision of the Constitution, with an exception which is not relevant to this case."

(F) The Public Interest

6.98 As is acknowledged by both parties, the tests in T.E. set out that public interest is a variable factor but it is never in itself insignificant. It may vary depending on the circumstances of the case. As the Supreme Court (O'Donnell J.) stated in *Minister for Justice and Equality v. JAT (No. 2)* stated:-

"An important starting point, in my view, is that considerable weight is to be given to the public interest in ensuring that persons charged with offences face trial. There is a constant and weighty interest in surrender under an EAW and extradition under a bilateral or multilateral treaty. People accused of crimes should be brought to trial. That is a fundamental component of the administration of justice in a domestic setting, and the conclusion of an extradition agreement or the binding provisions of the law of the European Union means that there is a corresponding public interest in ensuring that persons accused of crimes, in other member states or in states with whom Ireland has entered into an extradition agreement, are brought to trial also. There is an important and weighty interest in ensuring that Ireland honours its treaty obligations, and if anything, a greater interest and value in ensuring performance of those obligations entailed by membership of the European Union. All agreements are based on broad reciprocity and there is, therefore, a further interest and benefit in securing the return to Ireland for trial of persons accused of crimes, or the return of sentenced offenders. There is also a corresponding public interest in avoiding one country becoming, even involuntarily, a haven for persons seeking to evade trial in other countries."

The U.K. decision

6.99 The extradition of the respondent to the U.S.A. on these charges was ordered by the U.K. District Court. She appealed unsuccessfully. The decision of the High Court of England and Wales on the appeal was placed before the Court. At issue in the District Court had been whether there were family members available to assist in the event of extradition. It appears that the court had received a number of statements from the family that had either in the words of the court "skated over" or simply did not mention the critical issue of the respondent's daughter's future if extradition was ordered. During the course of the appeal there was an attempt to close this gap on behalf of the family but the High Court held that whatever view was taken of those statements from the family it was important to establish what arrangements could be made for the respondent's daughter's care while the respondent was absent if extradited.

6.100 In dismissing the respondent's appeal on the Article 8 issue in the case of *H v United State of America* [2015] EWHC 1066, Gross L.J. held as follows:-

> *"With regard to the best interests of K., this Court has throughout treated these as a primary consideration. From my part and notwithstanding the further statement supplied to this Court, I entertain real scepticism that when the reality of H's extradition can no longer be ignored, her family will not rally round to support K. Family members offered striking and praise worthy support for H. and K. in September, 2012 both as in the care for K. and furnishing the very substantial security to obtain H's release on bail. In agreement with the judge, who had the benefit of the evidence he had heard, I very much doubt that they will abandon K. now. Let it, however, be assumed that I am wrong and that the family members are indeed unable or unwilling to assist K. upon H's extradition to the U.S. On that footing - and though second best when compared with a family based solution - it is clear from the enquiries initiated by this Court that ECC will make all proper arrangements for K's care."*

6.101 Counsel for the Attorney General submitted that in respecting the principle of comity, this Court should have regard to the findings made by the U.K. courts on the issues raised before those courts. It was accepted by the Attorney General that this court must assess the additional evidence presented before it to determine if there is a basis to form different conclusions. It was submitted that while obviously not binding, the decisions of the U.K. court should be treated as persuasive authority in respect of the issues determined.

6.102 Counsel for the respondent submitted that the duty on this Court is to make its own assessment based on the material before it. This was particularly important where there were constitutional rights at stake as this Court was the only court that could make a determination as to whether the constitutional right to respect for personal and family life had been protected. The U.K. decision could not be a binding precedent and it could not be a persuasive precedent insofar as it deals with factual matters.

6.103 This Court holds that the U.K. decision is not a binding precedent for the Irish courts. It is a decision of a court in another jurisdiction. As regards matters of law, the Irish High Court has set out, in a number of authoritative judgments, the principles which must be applied when considering Article 8 and by analogy Article 40/41 cases. Those High Court decisions have been further supplemented by very direct statements from both the Court of Appeal and the Supreme Court in respect of the approach to family and personal rights in the context of surrender/extradition. Furthermore, the decision of the U.K. courts in *H v. United State of America* [2015] EWHC 1066 offer little, if any, matters of a legal nature that could possibly form the basis of persuasive authority. The U.K. decision is one of the application of the law in the U.K. to a particular set of facts.

6.104 As regards matters of facts, a decision on a particular set of facts does not automatically amount to a binding or even a persuasive precedent on another decision making body. Each decision making body must apply the law to the particular set of facts. When properly applied to the same legal principles, identical facts will lead to the same decision being reached. In this case, it cannot be held that the facts are identical. In the first place, this Court has not been provided, by either party, with the evidence that was placed before the U.K. court. Secondly and much more importantly, this situation has moved on significantly with the incarceration of this respondent in custody in this jurisdiction and the subsequent impact on the child K and on the respondent herself. Furthermore, and most importantly, this Court has a duty to assess the facts as of the date of hearing of High Court action in accordance with the applicable law at the time of the judgment.

6.105 That is not to say however, that the fact of the U.K. decision is insignificant. An important aspect for the determination of the court is the public interest in ordering the extradition of a particular respondent. In my view, a specific factor in this case is that this respondent's extradition has already been ordered to the U.S. on these charges from the U.K. but that she breached her bail conditions and fled to this jurisdiction. In the view of the Court, where a person has fled from another country to avoid extradition, this strengthens the public interest in the extradition of a person from this jurisdiction.

Gravity of the offence

6.106 Counsel for the respondent put forward the argument that the assessment of the gravity of the offence must differ under this heading from the assessment of the gravity of the offence for the purposes of the question of inhuman and degrading treatment. Counsel submitted that Mr. Sickler's assessment of the length of time that was likely to be imposed had to be taken as correct in the context of establishing a real risk of such a sentence being imposed. However, in counsel's submissions, this Court was entitled to take into account the U.S. view of the length of the sentence when assessing whether these were offences which were truly to be considered grave.

6.107 Counsel pointed to the declaration of Mr. Brian Hannafan. Mr. Hannafan took issue with Mr. Sickler's conclusion that [B] was likely to face a sentence of at or near twenty years. Mr. Hannafan argues that if the judge was only to find that she played a minor role in the conspiracy and that she was not in the business of laundering funds (as distinct from laundering proceeds of the illegal importation of steroids) that her offence level would drop to 32 instead of level 42 for count two on the indictment. He does not say what the length of time for such a sentence would be but it is a significant reduction on the length of time that Mr. Sickler posited. Furthermore, if she were to plead guilty she would receive an additional three level reduction for acceptance of responsibility for any count of conviction this would bring her down to a guideline range of between 87 to 108 months. That would be in the range of seven and a quarter years to nine years. If she was to enter a plea agreement and cooperate against other defendants Mr. Hannafan says that guideline range would drop to 44 to 54 months. That would be three and a half years to four and a half years. Overall his final conclusion is that it is much more realistic that if B enters into a plea agreement and cooperates with the United States, then B would receive a sentence less than ten years and most probably in the range of four to five years.

6.108 An issue for determination is whether the gravity of the crime to be assessed by reference to the maximum sentence that may be imposed, an assessment of the facts of the alleged crime or on the sentence that is likely to be imposed. The assessment of the gravity of the crime will vary depending on the circumstances. Merely focusing on the maximum sentence that may be imposed for a crime may lead to anomalies e.g. a

person who carries out a hugely sophisticated theft of millions of euro through an online scam may face the same maximum ten year sentence as a person charged with an impulsive shoplifting of a packet of sweets from a newsagent. The sentence that is in all reality likely to be imposed will be vastly different in each case.

6.109 In the view of the Court, the maximum sentence available is a general starting point for the assessment of the gravity of the crime. It is certainly an indication of how the offence is viewed in the requesting state and indeed the requested state. A more appropriate approach however is to have an assessment of the alleged acts together with a consideration of the maximum sentence. The possible sentence that may be imposed is also a factor that may be considered, but it is important that the court (a) does not attempt to usurp the sentencing prerogatives in the requesting state and (b) does not conflate gravity of the offence with a calculation of a sentence befitting the offender. As regards the latter fact, a crime can be extremely grave but in calculating the appropriate sentence for the offender before it, the court may take into account the offender's particular circumstances. Those are matters for sentencing and do not take away from the gravity of the crime itself.

6.110 In this particular case, the alleged crimes involve a very sophisticated criminal operation whereby illicit substances were imported from China and Moldova to the U.S.A. for mass distribution to consumers via the internet. It is alleged that the crimes were carried out over a long number of years and that very significant profits were made by the criminal organisation. The maximum penalties in the U.S. are high, indeed far greater than the penalties in this jurisdiction for the same alleged offences. In this jurisdiction offences related to medicinal products carry a maximum sentence of 10 years imprisonment and the money laundering a maximum sentence of 14 years imprisonment.

6.111 The Court has received evidence from the respondent in terms of the type of sentence that is likely to be imposed. The respondent does not wish to rely upon that evidence for the purpose of her submission of lack of proportionality in terms of respect for her private and family life. That is an unusual approach to take, but it is made on the basis that the respondent submits there are different standards of proof for the test for inhuman and degrading treatment and for respect for family and personal life. The respondent submits that they may have demonstrated substantial grounds for believing that there is a real risk of the extremely long sentence but that the Court should accept for the purpose of the Article 40/Article 8 issue that it is likely that she will receive a far shorter sentence.

6.112 In the present case, it is clear that Mr. Sickler has put forward the worst possible view of the sentencing issue. This has been questioned by the lead prosecutor primarily because it did not allow for the sentencing judge finding that she only played a minor role in the conspiracy and that she was not in the business of laundering funds (as distinct from the proceeds).

6.113 In my view, I am entitled and indeed obliged to look at the documentation before me to assess the gravity of the acts alleged against this respondent. The evidence placed before this Court refers to this respondent in a manner which shows that the main person in this conspiracy was her former husband Mr. Wannstein. The evidence pointing to her involvement is that Mr. Wannstein told the other conspirators to contact her when he was in prison for drug trafficking offences in this jurisdiction. Even though bank accounts had also been used in her name, her level of involvement is clearly alleged to be less than that of her former husband. Therefore, on the balance of probabilities it seems that Mr. Sickler is not correct in his assertion that she would receive a sentence or at or near 20 years.

6.114 It is difficult for the Court to identify, even on the balance of probabilities, the guideline sentence indicated for this respondent as the information as to what sentence a score of 32 would indicate was not provided by Mr. Hannafan. From what he has said about the sentence not being at or near 20 years, it can be understood that Mr. Hannafan is of the view that it will be less than that. The Court is entitled to take into account the evidence from Mr. Hannafan that on a plea of guilty the sentence could be one of between three and a half to four and a half years with co-operation. And in the range of seven and a quarter years to nine years on a plea of guilty simpliciter. The Court does so not because there is any suggestion of guilt on the part of the respondent who denies involvement but because this sentence indicates the gravity of the offending alleged. Even on a plea of guilty the gravity of the offence will be reflected in the sentence.

6.115 The Court also considers that it is of some importance that although these are offences relating to drug trafficking (and money laundering arising therefrom), they are not offences of trafficking in narcotics. The legislature in this jurisdiction has placed a maximum ten year penalty for offences regarding medicinal products in contrast to maximum penalties of life imprisonment for trafficking of controlled drugs under the Misuse of Drugs legislation. This is a statement by the legislators as to the comparative seriousness to society of offences of this nature. This is relevant to calculation of the public interest.

6.116 The offences are however made more serious by the level of the criminal conspiracy alleged against the respondent. This includes the cross-border aspect of the conspiracy and drug distribution, the level of money involved and the length of time over which the offending is alleged to have taken place.

6.117 It must also be noted that these are not offences involving any violence. Serious offences of violence bring with them a particularly high public interest. O'Donnell J. in *Minister for Justice and Equality v. J.A.T. (No. 2)* [2016] IESC 17 identified a clear distinction between the necessity for extradition in the public interest that may apply in cases involving serious violence as against other types of crime. Therefore, even where extradition may interfere very significantly with personal and family rights, the public interest in extraditing the requested person will be higher where the crime alleged is one of serious violence.

Delay

6.118 The respondent made a submission that the delay has reduced the public interest. In my view there is no real significant delay prior to the request for her extradition that would reduce the public interest. These were offences that took place over a long period of time up to and including November 2009. Given that a transnational investigation ensued there can be no criticism of the delay up to the request for her extradition that had been made by the U.S. in 2012. The delays since then have been as a result of proceedings, the fact that she fled from the U.K. and the fact that these proceedings have had to be adjourned to acquire further evidence and also to await a Supreme Court decision. Apart from a slight delay in dealing with para 97 of Mr. Sickler's affidavit, there is no blame attaching on the Attorney General or the U.S. authorities. The initial blame for that delay was in the inaccurate averment by Mr. Sickler.

6.119 In my view, there is no delay that lessened the public interest. The delay or lapse of time is only relevant to considering the current position. In other words, the Court has to assess the respondent's position at this moment in time, rather than how she was at the beginning of the proceedings.

Assessing the public interest

6.120 In light of all the above matters, namely involvement in a criminal organisation of some considerable sophistication through which large profits were made transporting illegal substances across borders, the maximum offences available for those offences and indeed the likely sentence to be imposed even on a plea of guilty according to the lead prosecutor, these must be considered serious offences. They are certainly not minor nor are they trivial offences. They are offences of substance and significance.

6.121 In considering both the gravity of the alleged offences and the public interest in extraditing a person who has fled from a neighbouring jurisdiction to escape the consequences of an order for her extradition there, it can be seen that on all counts whether taken individually or separately there is a high public interest in her extradition. It is not at the highest level of public interest because:

a) these are not offences of violence

b) they are not offences related to the supply of narcotics, they relate to the supply of unlicensed medicinal products

c) the maximum penalty here is significantly lower than in the U.S.A and the offences carry either a ten year or fourteen year maximum.

d) the US authorities evidence and their own opinion is that her liability as to sentence is not at the highest level available

e) the evidence demonstrates she was not the main instigator of the offences

f) she has served a large portion of any sentence that may be imposed

(G) The impact of extradition on C and D:

6.122 The Court was also directed to that part of the judgment in *Ostrowski* which made reference to the hardship of extradition on family members being taken into account. The Court was asked by the respondent to take into account the hardship on C and D in extraditing the respondent as they would be left to take care of the daughter K. The Court views this request as an attempt by the respondent to seek the best of both worlds. On the one hand, the possibility of the daughter being taken into care was floated with this Court because C and D were not sure that they were suitable guardians and also had taken deliberate life choices not to have children. On the other hand, if they are to be viewed as ongoing guardians of K, their lives will be significantly affected.

6.123 While a respondent is entitled to argue a fall-back position, the Court is of the view that this does not obviate the necessity for the respondent to present cogent evidence to the Court. In this case, C and D have not stated directly that they either will or will not continue to take care of K. It is also quite telling that they have taken care of K for almost three and a third years now and have not surrendered her care to Tusla.

6.124 It suits the respondent's overall argument to suggest that they will not take care of K, as that will leave the Court in the position of measuring the harm to K's interests by being taken into care against the public interest in her extradition. The Court takes the view that that the respondent has not established that C and D will decline to continue to care for K. It is clear that they are committed to assisting the respondent and her child. They have suffered significant financial loss because of the respondent's action and the breach of their trust in her, but they have put that aside to care for K.

over a long period of time and where other family members have declined to do so.

6.125 The Court has considerable doubt that the decision in Minister for Justice and Equality v. Ostrowski was meant to include those other family members who might take care of a child for the period in which a relative is extradited. It is a stretch to say that that is the kind of situation that could ever prevent an extradition. It is both too remote and also raises issues of public policy (can the right to respect for private life ever be involved where a person voluntarily assumes the care of a child?) that have not been fully addressed. It is not necessary to enter into consideration of whether this kind of argument could ever succeed because in this case the factual situation makes clear that the public interest in the extradition of this respondent far outweighs any private interest C and D have in their assertion that their rights have been affected by assuming the "burden" of caring for K. In short, it is not unjust or disproportionate to extradite the respondent when measured against the effect for C and D.

(H) Right to respect for the respondent's personal life

6.126 The Court is required to examine this evidence rigorously. The specific facts of this case are that the respondent is a very vulnerable person by virtue of her clearly established mental ill-health. The respondent has been on a specially designed regimen to allow continual supervision in the Dóchas Centre throughout her period of detention. Even then she was able to attempt suicide twice and self-harm on occasions.

6.127 The evidence of Dr. Mullaney is careful and restrained. His initial concerns were that should the intensive treatment and resources as she is on at present not be available to her in the U.S.A., she would require continual management in isolation and segregation to manage her risk of suicide. If kept in isolation indefinitely that would be at the expense of quality of life for the respondent.

6.128 Dr. Mullaney's penultimate and final reports provide the Court with a much more complete picture of the nature of respondent's mental ill-health, the triggers for that ill-health, the intensive treatment she required and still requires and the significant increase in her risk of attempted and completed suicide should she be extradited. She is at greater risk if her depression and B.P.D. crises coincide. She has responded to the possible of a prolonged separation from her daughter with a consistent pattern of suicidal thoughts and has engaged in two serious and potentially lethal acts of self-harm while in custody over the last 18 months, as well as other acts of self-harm. In recent times she has stopped eating, as a response to the stopping of visits from her daughter (at her daughter's request).

6.129 The Court accepts the uncontroverted evidence of Dr. Mullaney that this is a woman with very specific mental health issues, namely B.P.D., a recurrent depressive disorder which is currently in partial remission and an Eating Disorder (not otherwise specified). When she is in borderline crisis and depressed the severity of both conditions and her risk of harm to herself is significantly increased. An order for her extradition will place her at further relapse of her depressive disorder and she is at increased risk of attempted and completed suicide. Her depression in this jurisdiction required a tailored, i.e. individual, suite of interventions which was both unusual and highly resource intensive. She is on a mixture of four separate drugs to treat her depression and mood disorder, undergoes weekly psychotherapy and is on special observations. As the Special Observations were having a detrimental effect on her mental health over the long term, she was placed under a special regime in which she was managed within a regular room within the Healthcare unit of the Dóchas centre, her attendance at school activities and gym were facilitated despite being on special observations and she was facilitated with family contact each week with her daughter and phone visits nightly. At her daughter's

request she now only has phone contact with her.

6.130 Dr. Mullaney's final conclusion is that "the likelihood is that following any decision to extradite her to the U.S., B's mental state will deteriorate significantly due to the likelihood of prolonged physical separate from her daughter and family. When distressed, due to her limited resilience and mental health difficulties, B tends to be come suicidal and any suicidal ideation or acts would likely result in her placement on "suicide watch" as noted above. The resulting restrictions on her telephone contact with her daughter and family would further exacerbate her distress and increase her risk of self-harm and completed suicide."

6.131 The reference to "suicide watch" is a reference to paragraph 97 of Mr. Sickler's affidavit. The Court has already indicated the problems with that evidence of Mr. Sickler. It is even more unfortunate that despite the controversy that this paragraph had created in the Court proceedings, that the respondent's solicitor did not provide Dr. Mullaney with the subsequent affidavits including the clarification by Mr. Sickler

6.132 It appears that what Mr. Sickler actually says is not that there is a policy to keep people isolation during their entire time on suicide watch, but that there may be a short time in isolation when contact may be more limited than when on general population. His complaint was also about the implementation of those policies

6.133 This Court must determine this issue on the basis that para 97 of his affidavit does not entirely reflect the true position. It is in that context that the Court must assess the final determination of Dr. Mullaney. Dr. Mullaney's opinion referred to more than just the absence of telephone contact. He was also referring to the absence of prolonged separation from her family and daughter. The Court has evidence before it that shows that there will be a lack of physical contact between the respondent and her family and her daughter. This is primarily because of the cost issue involved in travelling to the U.S.A. and to the particular part of the U.S.A. where she would be housed. Her family, namely C and D would have problems travelling there. Furthermore, even if her daughter wished to see her (and it is not unreasonable that she might do) that would be difficult to arrange given the distance and cost involved. Certainly, there would be no question of a daily access as there was prior to K deciding to cease her visits.

6.134 I am satisfied that there is no question of a person who is on "suicide watch" for the length of time this respondent has been on it (more than three years) being denied access to telephone contact during that period. It does appear that there is telephone access available for prisoners. It is necessary to comment on the state of the evidence concerning prisoners at risk of suicide in US federal pretrial facilities.

6.135 The U.S.M.S. Deputy Supervisor, Mr. Dill, stated that if notified of a potential suicide risk, the suicide prevention protocol of the local jail is initiated but he never said what that protocol involved. More particularly when dealing with the inspection of facilities and whether they were in compliance with the U.S.M.S. standards he never said what those standards or policies were. He says that prisoners on suicide watch have access to telephones and family visitation. This Court makes clear that it accepts that the dire and alarming situation identified by Mr. Sickler does not represent the true position as regards telephones and access to family even for a prisoner on suicide watch. Unfortunately, there has been no indication as to how this access might differ from the access that prisoners in general custody will have. Indeed, despite the request for specific information about family contact that this court made in March 2017 there was no indication as to how often this respondent, if placed on essentially a permanent "suicide watch" could expect to contact her family by telephone. I cannot therefore conclude on the balance of probabilities that she will have daily contact with her

daughter.

6.136 It has been clear since the first affidavit of Dr. Mullaney in June 2016, that this respondent was extremely vulnerable in custody and required tailored and resource intensive to manage her risk of suicide and also to provide for a quality of life for her. The U.S. authorities have provided a large amount of evidence of how issues of mental health are dealt with in custody in the pre-trial jail facilities in Kentucky and Tennessee. It can be accepted that the U.S. B.O.P. and U.S.M.S. have protocols and policies in place for assessing and treating where necessary persons with mental health conditions, even severely mentally ill persons. In all the evidence presented to the Court, there is no indication that a medical care package as complete and individualised as the respondent currently experiences would be given to her or to any individual prisoner.

6.137 That finding is not made as a criticism but is simply a statement on the state of the evidence before me. At this point in the judgment, the Court is assessing respect for personal rights and not a matter of whether there is inhuman and degrading treatment. It may well not be necessary in an Article 3 case to guarantee an identical care package; the level of psychiatric support that must be provided to prevent imprisonment being inhuman and degrading is an entirely different assessment. The question of whether the level of personal suffering in extraditing a seriously mentally ill person is disproportionate involves considerations beyond whether minimum levels of treatment will be provided.

6.138 The uncontroverted and uncontrovertible facts in the present case demonstrate that the respondent is a particular vulnerable person due to serious mental health problems. The current medical evidence is that mental state will deteriorate significantly due to the likelihood of prolonged physical separation from her daughter and family. That is an inevitable result of her extradition and the blame for that lies neither with the U.S.A. authorities nor with any authorities here. It is a tragic consequence that flows from the requirement to bring persons to justice. That is not the end of the matter because this Court is required to reach a decision as to whether it would be disproportionate in all the circumstances to that public interest in ensuring that she faces trial in the U.S.A. on these charges.

6.139 The respondent is almost certainly bound to be kept in pre-trial detention (understandably due to her history of flight) and that detention is likely to be for considerable period of time. She will be separated from her daughter (an inevitable part of extradition and not in itself objectionable). This possibility of prolonged separation has already caused suicide attempts and it has been established that her risk of attempted and completed suicide would increase significantly. Her physical and verbal contact with her daughter has been the single most important protective factor for the respondent in reducing her risk of self-harm or completed suicide. Since her daughter has opted not to visit the prison, the respondent has reduced her food intake and has an eating disorder not otherwise specified. She is asserting that she is doing this as a way of exercising control. In my view this is indicative of the severity of the suffering that she experiences as the loss of contact with her daughter.

6.140 A point has been made that the loss of physical contact with her daughter cannot now be taken into account as her daughter does not visit her here in Ireland. In my view this is not a correct approach for a number of reasons. At its most basic this is because the loss of contact has resulted in severe suffering to her already and that the physical distance between herself and her daughter if extradited would render nugatory any change of mind by her daughter about visits. Fundamentally however, the true comparison that must be made is to the situation where she is at liberty and therefore will have contact with her daughter and where she has been extradited and has none. This is particularly important to bear in mind as she has a presumption of innocence in

respect of these offences and she is not in custody in Ireland for any other reason. She is only in custody on these extradition offences and if she is not extradited she will be at liberty. If there were no extradition proceedings, there would have been no separation from her daughter. It would therefore be wrong to say that simply because her young daughter does not visit her in jail now (having done so weekly for over two and a half years), the court should disregard the loss of contact that the extradition would entail.

6.141 The evidence establishes that there is a real risk that extradition will result in a significant and potential deterioration in her mental and physical health. Her depression and B.P.D., when present together in a time of borderline crisis, create real danger of self-harm and suicide. She is greatly distressed by separation from her daughter and that is likely to continue and to lead to further deterioration in her mental health.

6.142 This is truly a unique and exceptional case. The mental health sufferings of this respondent are real, enduring and profound. They arise from a complex set of circumstances related to her BPD, her closeness to her daughter, her distress at the thought of separation and her recurrent depressive disorder. She is at significant risk of a deterioration in her condition if she were to be extradited because of the separation that would endure.

(I) The right to respect for the respondent and her daughter's family life

6.143 In every extradition request for a parent of a young child, it is undoubtedly the case that it would be better for both parent and child if no extradition would take place. It is generally in the best interest of children that they remain with the parents or with a single parent if being raised by a single parent. It can be readily accepted that in every case where a parent is separated from her or his child this will be particularly wrenching for both parties. This is especially so where the parent is a single parent and the other parent is unavailable to take over parenting. It is not the law however that extradition cannot take place of a parent, even a single parent. On the contrary, the public interest in ensuring that all persons, including children, live in a place of security, safety and respect for the rule of law, requires that those who are sought for trial or to serve sentences, must be made amenable to the relevant criminal justice systems. It is only exceptionally, in very particular circumstances, that the right to respect for the private and family life of the parent and child will require extradition to be prohibited. The Court will now examine the circumstances of the child K. in this case.

6.144 The evidence reveals that K. is a child at risk given the close links with her mother and the difficulties she has experienced. This link was especially close because of the nature of the life her mother led with J. The Court is of the view however, that the evidence does not support the contention that K. will ultimately be placed in care as a result of the extradition of her mother. C and D have cared for her to date and there has been no handing over of care to Tusla.

6.145 In my view the evidence regarding K shows a child who has also suffered as a result of her mother's status as a person requested by the U.S.A. for extradition and especially as a result of her mother's incarceration. The evidence of the psychologist Ms. Hawkins, is accepted by this Court even though it may have been better if the earlier U.K. reports had been exhibited. The Court is satisfied however that Ms. Hawkins has interviewed K and taken collateral information from other members of the respondent's family. K is a very vulnerable and lonely child and here emotional development has been compromised by recurrent trauma. At the time of interview, she was suffering from current distress as evidence by recurring enuresis and encopresis. In her report exhibited in her affidavit of June 2016 Ms. Hawkins concluded "separation of a longitudinal nature from her mother may have lasting and irreparable consequences for K in that in her attempts to avoid strong painful emotion and mange a fear of future

hurt, K may cut her attachment with her mother, thus impacting negatively on her future prospects for good psychological health and damaging her personal ability to engage in and maintain positive adult relationships for herself into the future."

6.146 Sadly, Ms. Hawkins professional foresight has come to pass and K has reduced her attachment to her mother by declining to visit her in prison. In my view, this demonstrates the huge emotional impact that the incarceration of her mother has had on K. I am entitled to draw the inevitable inference that this huge emotional impact is ongoing. It is further an appropriate inference to draw that the greater possibility of lessening this impact arises the sooner that mother and daughter can be reunited outside the confines of a prison and with the possibility of them living together once again.

6.147 From the evidence, I am entitled to draw an inference that separation from her mother brought about by the suicide of her mother would also have lasting and irreparable consequences for K In any event, I am of the view that the Court is entitled to make a finding without the need for professional evidence that in the case of a minor child, the death of a mother would be especially harmful and injurious to the child.

(J) Decision on the proportionality of the extradition

6.148 It is only in a truly exceptional case that extradition will be refused. Each case must be decided on its own facts and it is not normally useful to compare the facts of other cases. It is worth noting that there have been other occasions where circumstances have been found to establish that it would be disproportionate to order surrender. One such example is that the High Court (Edwards J) in the case of *Minister for Justice and Equality v Machaczka* [2012] IEHC 434 refused surrender on Article 8 ECHR grounds in circumstances where the requested person was sought on two warrants for fraud offences but was suffering from severe psychiatric illness which was somewhat stabilised here in a supportive family environment and where he was at serious risk of committing suicide if he was surrendered.

6.149 In the case of *J.A.T. (No.2),* Denham J and O'Donnell J referred to the family circumstances of the respondent and his medical condition and that of his adult son for whom he was a significant carer in refusing extradition on Article 8 grounds. O'Donnell J, having cited the many and varied factors in the case, stated that he was not sure that those factors would be sufficient to stop extradition if it was a case of serious violence.

6.150 As has been demonstrated from the evidence above, there are exceptional circumstances in this case. The respondent has a well-established, verified psychiatric history. She is being treated on a most exceptional and personally tailored psychiatric and psychological regime in custody. She has made real attempts at suicide. She is restricting her food intake so as she can have some control. This is in response to loss of physical contact with her daughter at the option of her daughter. She has been diagnosed with Recurrent Depressive Disorder, Borderline Personality Disorder and Eating Disorder (not otherwise specified). She has suffered and is suffering intensely as a result of her incarceration and separation from her child. Her mental health is likely to deteriorate significantly (and it is fragile as it is) if she is extradited. Her daughter's psychological well-being has been already impacted by the separation from her mother and will be if it continues.

6.151 The respondent has spent almost three and a third years in custody. Apart from two weeks in the U.K. seeking bail, the rest of that time was entirely her own fault as she fled from the U.K. when her extradition was ordered. Indeed, fleeing from one country to another is a factor which will render the public interest in extradition even higher. That is a factor to which this Court has given great consideration. Its significant

weight must be balanced against the matters which are on the other side of the equation in determining the proportionality of extradition. When the 15% remission in taken into account, those three and a third years represent the totality of the time she would likely serve if she was to plead guilty and co-operate. Of themselves those years are a significant portion of the overall sentence that might be imposed even without a plea of guilty. That time in custody is therefore a weighty factor that the court is entitled to take into account in deciding whether her extradition is necessary in a democratic society.

6.152 In the present case, I am satisfied that not only are the individual factors persuasive but that there is a combination of factors which are exceptional. These are her proven serious psychiatric condition, the fact that she has spent almost three and a half years in custody under intense psychiatric treatment including Special Observations, that she has attempted suicide twice while under those Special Observations and self-harmed on other occasions, that she has suffered severely during that period of time and that suffering has been ameliorated by contact with her daughter, that such suffering is likely to continue, that should she be extradited it is likely that her mental health will deteriorate, that there is a real risk of self-harm and suicide should she be extradited and that there is and has been a severe impact on her daughter due to that separation, that her daughter was a vulnerable child prior to this and had a particularly close attachment to her mother and that she will undoubtedly be impacted upon further should her mother be extradited and especially should her mother commit suicide. These factors lead to the conclusion that it would be particularly injurious and harmful both to the respondent and to her daughter to extradite the respondent.

6.153 Those factors must be weighed against the public interest in extraditing her. While in the ordinary course the fact that a person fled from another country to avoid extradition would weigh heavily in favour of ordering extradition, the extraordinary suffering this respondent has endured for almost three and a third years in custody and the likelihood that this mental suffering is highly significant. If this was a case of serious violence the balance would lie in favour of extradition. It is not such a case however. It is a case where the maximum penalty for the offences relating to medical products in Ireland is ten years imprisonment and the money laundering offence is fourteen years imprisonment. The evidence also demonstrates that her involvement was secondary to her former husband. He was a person about whom she had made a previous complaint of rape about to her G.P. in or about 2006. From the evidence including the affidavit of her brother, I view her as a vulnerable person who was used and abused by her former husband who was a convicted criminal and quite probably a professional con man. The level of her involvement in the offence is a factor that the court is entitled to take into account when weighing whether her extradition is necessary in the public interest in all the circumstances.

6.154 It is also important in the balancing between the public and private interests when considering whether it is necessary in a democratic society to extradite the respondent, to take into account that even though the public interest in her extradition is otherwise high, she is not sought for offences of personal violence and that she has served at least the minimum sentence already that she would have to serve if she pleaded guilty and was co-operative. It is also of some relevance that she is not alleged to have been the main instigator of this offence but that the main instigator was her abusive husband in relation to whom there is supportive evidence in the form of a doctor's referral letter from 2006 that he was a person who had raped her.

6.155 Having weighed in the balance the competing public and private interests at stake, I have considered that in the complex interplay of factors that this case has presented, the private interests of the respondent and her daughter outweigh the understandable public interest in her extradition. In my view, the truly exceptional

family and personal circumstances of this respondent demonstrate that the particularly injurious and harmful consequences of extradition on both her and her young daughter are so powerful that the countervailing public interest in her extradition for these offences are outweighed where she has served almost three and a third years in custody for these non-violent offences. In all the circumstances, it would be unjust to extradite this respondent as the extradition would be a disproportionate interference with the right to respect for her personal and family life.

7. Inhuman and degrading treatment

7.1 In light of the findings I have made in respect of extradition and her right to respect for family and personal life, it is unnecessary to make proceed to make any findings as to whether the conditions of detention in the U.S.A. would amount to inhuman and degrading treatment arising out of her serious mental ill-health.

8. Conclusion

8.1 The Court is satisfied that the formal proofs for extradition in this case have been met. The main points of objection were based upon claims that the fundamental rights of the respondent would be breached should she be extradited. The factual basis for the claims were the proven; long-term, comorbid mental health conditions that the respondent suffers with. During the almost three and a third years she has spent in custody she has been on constant Special Observations (for those who are suicidal). These observations have been specifically tailored for her because of its longevity and the detrimental effect it was having on her. She also received weekly individual psychotherapy and intensive psychopharmacological treatment. Despite this she has made two attempts at suicide and has self-harmed. More recently, following the decision of her daughter not to continue her regular visits with her, she has restricted her food intake and is now diagnosed with an Eating Disorder. She has daily telephone contact with her daughter.

8.2 Extradition to the U.S.A. will be likely to cause her mental state to deteriorate significantly. When distressed, due to her limited resilience and mental health difficulties, the respondent tends to become suicidal. Her daughter is also vulnerable and continued separation from her mother places her at serious risk. A mitigating factor in the separation from her daughter was the weekly contact she had with her mother and the daily telephone contact. For her own understandable reason K, has decided not to visit the prison. Her psychologist had the professional foresight that separation from her mother may have a lasting and irreparable consequence for K in that in her attempts to avoid strong painful emotion and manage a fear of future hurt she may cut her attachment to her mother. K's current decision is a partial cutting of those ties. She is a child who has been damaged by the events which have occurred and will undoubtedly suffer should her mother be extradited and in particular should her mother's ill health deteriorate.

8.3 Those particularly powerful, persuasive family and personal factors have to be weighed against the public interest in extraditing her. When balancing the public and private interests in this extradition request, the court has to consider whether it is necessary in a democratic society to extradite the respondent. The Court has taken into account that even though the public interest in her extradition is otherwise high, she is not sought for offences of personal violence and that she has served at least the minimum sentence she would have to serve if she pleaded guilty and was co-operative. It is also of some relevance that she is not alleged to have been the main culprit.

8.4 The personal and family circumstances of this respondent are truly exceptional. The circumstances when taken together, demonstrate that the particularly injurious and harmful consequences of extradition on both this mentally ill respondent and her young daughter outweigh the public interest in her extradition, where she is not sought for

crimes of violence and has spent almost three and a third years in custody thereby serving served a significant portion of any sentence that she might receive. In those circumstances, it would be unjust to extradite this respondent in the unique and exceptional circumstances of this case as the extradition would be a disproportionate interference with the right to respect for her personal and family life.