[2019] IEHC 848

THE HIGH COURT

[2015 No. 85 EXT]

BETWEEN

THE ATTORNEY GENERAL

APPLICANT

AND

DANIEL PAUL MATACHE

RESPONDENT

JUDGMENT of Mr. Justice Binchy delivered on the 4th day of December, 2019

1. By this application, the applicant seeks an order for the extradition of the respondent to Switzerland in accordance with the provisions of the Extradition Act 1965 (the "Act of 1965"). The extradition of the respondent is sought in connection with a number of offences allegedly committed by the respondent in Switzerland on 9th March, 2012. Specifically it is alleged that the respondent committed the following offences: -

> Attempted homicide, attempted intentional homicide, serious assault, common assault, coercion, disruption of public traffic and serious traffic infraction.

2. The request for extradition was received by the applicant on 22nd December, 2014. The Minister for Justice completed a certificate for the purposes of s. 26(1)(a) of the Extradition Act 1965, on 18th May, 2015. This Court (Donnelly J.) issued a warrant for the arrest of the respondent on 21st May, 2015. The respondent was arrested and brought before this Court on 23rd April, 2019. Points of objection were filed on behalf of the respondent on 5th June, 2019, and the application proceeded before this Court on 10th October, 2019.

3. Whilst eight issues are raised by the points of objection, just one was pursued at the hearing of this application. That objection is that the surrender of the applicant is sought for the purposes of investigation, and not for the purpose of proceedings against the respondent as required by s. 9 of the Act of 1965, which provides: -

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

The respondent's argument was grounded upon advices received by the respondent's solicitor from lawyers in Switzerland, as well as on information furnished by the Public Prosecutor in Lugano, who has a responsibility for the matter in Switzerland.

Facts as stated in the warrant of arrest and the extradition request

4. In the warrant of arrest dated 15th November, 2013, it is alleged on 9th March, 2012, the respondent and others assaulted a named individual as an act of revenge. The assault concerned was carried out in a public place, and the assailants, of whom it is alleged the respondent was one, were armed with golf clubs and knives. They beat the victim

repeatedly. It is alleged that the assailants wanted to kill the victim, but did not achieve that objective because they were disturbed by third party activity.

5. The warrant of arrest summarises the evidence which comprises statements taken from the victim and his girlfriend (who was with the victim at the time of the assault), the wounds suffered by the victim, subsequent telephone tapping of telephone conversations of the respondent and others and forensic evidence.

6. The facts as summarised above are again repeated in the extradition request issued by the Public Prosecutor to the applicant. Both documents also record that the assailants, including the respondent, immediately left Italy and from there went onwards to Romania (the respondent is a Romanian national).

7. The request for extradition also records that one of the assailants has already been found guilty of attempted homicide in connection with these events and was sentenced on 14th June, 2013. In a letter to the applicant of 20th August, 2019 (addressing questions put to Swiss lawyers engaged by the solicitors for the respondent (which I address below) and the responses of the Swiss lawyers thereto) the Public Prosecutor states that because the respondent fled Switzerland immediately after the events concerned, it was never possible to arrest and/or interrogate him. He goes on to say: -

> *"Nevertheless, on March 9th, 2012, the Public Prosecutor's Office immediately opened an investigation (Art. 309 CPP) against both Matache Daniel Paul and his accomplices Gudi Calin and Began Christian Marian. The investigation ended on December 18th, 2012, not only against Gudi Calin (sentenced on June 14th, 2013 to 10 years of imprisonment) and Began Christian Marian (still on the run), but also against Matache Daniel Paul, assuming all evidence and objective findings against him. Evidence that could not be contested to him as he is still on the run."*

Advices of Swiss lawyers

8. By letter dated 7th June, 2019, Michael J. Staines and Company, solicitors for the respondent wrote to a firm of lawyers in Geneva (Mentha Avocats) seeking advices for the purposes of this application. They posed a number of very specific questions and, having received replies thereto, they referred both questions and replies to the applicant for comment. In turn, the applicant referred the questions and replies to the Swiss Public Prosecutor for comment. To the extent relevant for this judgment, the questions and replies of the Swiss Lawyers, and the comments of the Public Prosecutor may be summarised as follows: -

(1) <u>Does the Swiss Criminal Justice system have a separate investigation stage and trial stage?</u>

The Swiss lawyers confirmed that it does, and the Public Prosecutor, in its comment on this reply, confirmed his agreement with this answer.

(2) <u>How does a case move from the investigation stage to the trial stage?</u>

The Swiss lawyers advised that upon completion of the investigation, the Public Prosecutor has two options. The first is to issue an order of abandonment of the proceedings, and the second is to bring charges before the competent court, based on the results of the investigation. They further advised that on receipt of the indictment, the proceedings become pending before the court, and this marks the beginning of the trial phase. The Swiss Prosecutor indicated his agreement to this answer, without qualifications.

(3) Who makes the decision that the suspect should be put on trial?

The Swiss lawyers advised that this is a decision to be made by the Public Prosecutor, whose decision cannot be challenged. Again, the Public Prosecutor agrees with this answer.

(4) Has the investigation stage of Mr. Matache's case concluded?

(a) The Swiss lawyers advised that in their opinion, the investigation stage of the case has not been concluded. They advanced two reasons for this conclusion. The first is that the Swiss Criminal Procedure Code requires that:-

> "In extensive and complex preliminary proceedings, the public prosecutor shall question the accused again in a final examination hearing before concluding the investigation and request the accused to comment on the findings. (Article 317 S Crim PC)."

They further advised:-

> "Moreover, according to Article 318(1) S Crim PC relating to the conclusion of the proceedings, if the Public Prosecutor regards the investigation as completed, it shall issue a summary penalty order or give written notice to those parties whose address is known of the imminent conclusion of the investigation and inform them whether it is intended to bring charges or abandon the proceedings."

> The Swiss Lawyers also referred to a letter issued by the Swiss Federal Department of Justice to the applicant herein, dated 31st July, 2014, whereby the extradition of the respondent is requested. In this letter it is stated that: "*the Public Prosecutor's office of the Canton of Tessin is conducting an investigation against the above named person*". The same letter however, concludes in the following terms: "*We hereby formally request the extradition of the above mentioned person to Switzerland for the prosecution of this matter*".

Finally, the Swiss lawyers rely on the fact (agreed by the applicant herein) that no formal order of conclusion of investigation has been issued, and nor has any indictment or formal order bringing charges issued.

(b) In a comment on this conclusion (that the investigation phase is not concluded), the Public Prosecutor states that the opinion of the lawyers is "*wrong*". In reply to the question (has the investigation stage concluded?), the Public Prosecutor states:-

> "as indicated in the foreword, the preliminary proceedings of Mr. Matache Daniel Paul are concluded, even if no charges against him have been brought and the indictment has not been issued yet. To make that happen, Matache Daniel Paul will have to challenge all the evidence taken in the preliminary proceedings and this is in his own interest and in respect of the right to be heard (Art. 3 par. 2 lett. c CPP and Art. 107 CPP)".

(5) <u>Is a decision to put Mr. Matache on trial dependent on further investigation being carried out?</u>

(a) The Swiss lawyers replied that, according to the Swiss Criminal Procedure Code, the parties, notably the suspect, have the right to be heard. This arises under Article 107 of the Code and includes the right to participate in procedural acts, the right to comment on the case and on the proceedings and the right to request that further evidence be taken. Furthermore, under Article 317 of the Code, where serious offences are involved, the suspect is heard in a final examination hearing before concluding the investigation. In the opinion of the Swiss lawyers therefore any decision to put the respondent on trial must be preceded by these steps.

(b) In his response, the Public Prosecutor states that the conclusions of the Swiss lawyers are not entirely correct. He agrees that Article 107 of the Code applies and he says that "*before the issuing of the indictment, all the evidence taken in the preliminary procedure will be contested to Matache Daniel Paul and this in his own interest (sic) and in respect of the right to be heard (Art. 3 par. 2 lett. c CPP and Art. 107 CPP). It is therefore not a question of "carrying out further investigations", but only of carrying out this fundamental investigative measure, without which it is not even possible to proceed in absentia. Matache Daniel Paul has always knowingly escaped from this investigative act, so the current objections of Mentha Avocats are specious*."

(6) <u>Has there been any formal decision being (sic) made to put Mr. Matache on trial?</u>

a) The Swiss lawyers advised that no formal order announcing the conclusion of the preliminary proceedings have been transmitted by the Swiss authorities to the Irish authorities. They further state that no formal indictment has been transmitted either, and it can reasonably be assumed that had an indictment been issued, it would have been transmitted to the Irish authorities.

b) The Public Prosecutor confirms that an indictment has not yet issued and states that this is for the reasons already "*widely explained*". By this I

understand him to mean that it is first necessary for the prosecutor to afford the respondent the opportunity to be heard in accordance with Article 107 of the Swiss Criminal Code. He makes no reference to Articles 317 and 318 of the Code.

Submissions

9. In simple terms, it is submitted on behalf of the respondent that the information received from the prosecutor, coupled with the advices received from the Swiss lawyers make it clear that not only has the Public Prosecutor not issued an indictment against the respondent, nor has he made any decision to issue an indictment. Moreover, it is submitted that the information received makes it clear that there are two separate and distinct phases in the criminal justice system in Switzerland, the investigation phase and the trial phase. It is submitted that the information received from the prosecutor further makes it clear that the proceedings, have not yet moved from the investigation to the trial stage, and the Swiss lawyers have so advised. All of that being the case, the extradition of the respondent is precluded by s. 9 of the Act of 1965, and the respondent relies upon the decision of the Supreme Court in *Attorney General v. Pocevicius*. [2015] IESC 59. While I will deal with this case in more detail below, counsel for the respondent refers and relies in particular on the following passages from the decision of McKechnie J. in *Pocevicius*:-

"48. (1)

- *A person should be surrendered if the purpose of the request is "to prosecute", that is, to put him on trial for the subject offence.*
- *Where such prosecution proceedings are in being, that will be a sufficient compliance with this requirement.*
- *Where such proceedings are not in being the intention to prosecute must be founded on the existing evidence, as known at the time of the request.*
- *Where such proceedings are not in being an intention to charge only is not sufficient: in addition, there must be a decision to try, i.e. to put the individual on trial.*

48. (3)

- *What is required however is that the decision to prosecute is not contingent or otherwise dependent on any further investigation producing evidence without which no such decision could justifiably be made.*
- *The investigation must therefore have reached a level whereby there exists sufficient evidence in the opinion of the competent prosecution authority upon which the extradited person can be charged and tried and further that a decision to do so has in fact been made. …*

50.

It can, I think, be specifically and definitively stated at a general level, that a person will not be extradited unless, at the time of the extradition request, the requesting country have a fixed intention to 'charge' the suspect with the offence(s) specified in the warrant. By the word 'charge' I mean that the subject individual is no longer simply a 'suspect' in the crime under investigation, but rather his status is then one of 'an accused' as these terms are understood in Irish law."

10. Counsel for the respondent submits that in spite of being asked very direct questions on the issue, the prosecutor has failed to answer the questions as to whether (a) any decision to issue an indictment against the respondent has been made or (b) whether or not it is his intention to issue such an indictment. Moreover, it is submitted that under the Swiss Criminal Code, the Public Prosecutor is obliged, pursuant to Article 318 thereof, when an investigation is completed, to issue a summary penalty order or to give written notice to those parties whose address is known of the imminent conclusion of the investigation, and to inform such parties as to whether or not it is intended to bring charges or abandon the proceedings. The assertion of the Public Prosecutor that the investigation has been completed is at odds with the failure to serve such a notice. While it might have been impossible for the authorities to serve such a notice while the respondent was at large, and his address was not known, there is no reason why the notice could not have been served once the Swiss authorities became aware of his location.

11. It is submitted on behalf of the respondent that the Court cannot draw inferences from the information received from the Public Prosecutor that a decision to charge the respondent has been made. The Public Prosecutor himself has failed to give a clear answer to this question, notwithstanding that he was asked the question very clearly by the applicant. Accordingly, it is submitted, the extradition of the respondent should be refused.

12. Counsel for the applicant on the other hand submits that the Public Prosecutor has clearly stated that the investigation stage of the proceedings is over, and that the only reason that an indictment has not yet been issued is the need to afford the respondent his entitlements under Article 107 of the Swiss Criminal Code to comment on the case against him, to request that further evidence be taken and to contest the proceedings. The Prosecutor has been unable to move the proceedings forward to indictment stage by reason of Article 107 of the Swiss Criminal Justice Code. Until that occurs, an indictment cannot be issued.

13. The applicant also relies on the decision of the Supreme Court in Pocevicius, which, he submits, is on all fours with the circumstances of this application, and in which case the Supreme Court was satisfied that an order for the extradition of the respondent could be made. Counsel for the applicant refers to the following passages from the decision of McKechnie J.: -

"53. The request for Mr. Pocevicius's extradition cannot, in the sense in which the relevant terms are used in extradition law, be said to be for the purpose of

'investigation' or of 'continuing the investigation'. The reason why an indictment has not issued is that under Norwegian law it is a requirement, at least to the standard of best prosecution practice, that before making a final decision in that regard, the subject person should be given an opportunity of making a statement or of putting forward his version of events, so that the police or the court as the case may be, can assess what it says in light of the evidence which has already been accumulated. If, as is his right, he fails or refuses to offer any information, then the evidence as it stands will be submitted to the Director General by the Public Prosecutor with the recommendation that an indictment should issue. If he makes a statement, then depending on its content and what any follow-up inquiries may lead to, the case may be discontinued or it may still be submitted for final decision. But the crucial point is that if nothing emerges from such an interview process, the Director General, based on what is presently available, will be advised to issue an indictment, though the investigation is still open but only so as to offer the respondent an opportunity of disputing, rebutting or challenging existing evidence 'but not for any other specific purpose': In particular, not for the purpose of obtaining additional evidence upon which the ultimate decision might rest.

54. *Given the diversity of systems which the 1965 Act was intended to accommodate, I am perfectly satisfied that what has been described herein as remaining to be done, so as to complete the investigative process, is entirely consistent with the provisions of the Act and the policy and the objectives behind it: Accordingly, in my view, this point does not constitute any bar to extradition.*

55. *The prosecution process must be looked upon as a continuum. In a case such as this, it involves the various stages the police, the public prosecutors and the Director General. It has passed through the hands of those who make the inquiries, conduct the investigation and accumulate the evidence: This part of the process is thus at an end, subject only to interviewing the respondent if extradited, and any further inquiries arising therefrom, or which they may be asked to undertake. Their final act was to transfer the case to the Public Prosecutor with a recommendation as to its future course. This therefore, subject to the aforesaid, terminates the involvement of the police with this case.*

56. *The Public prosecutors have advanced the process as much as they have authority to do so. They have assessed and evaluated the evidence. They have formed a view on it. In their opinion, it is of such a character as would sustain and support an indictment. They have made a recommendation to the Director General to this effect. They do not have power to go any further. Is the fact therefore that the ultimate decision to prosecute has not yet been taken fatal to this application? This is the end point of issue number one.*

57. *Despite the extensive documentation ultimately submitted, there is no reference whatsoever as to what view the Director General might take if the evidence remains as it is. Nor is there any indication of a pattern or course of conduct as to what his*

decision might be in similar circumstances, where such a recommendation has been made…

58. There is no question of the Director General being able to activate or re-activate any further part of the investigative process other than to interview the respondent in the manner and for the purposes, above described. Therefore, in the absence of further evidence emerging, the options open to him are either to endorse the recommendation or to decline to do so. If it should be the latter, then the prosecution proceedings, such as they are, will be at an end. If it should be the former, an indictment will be made. In such circumstances, the entire process, looked at as a whole, can be regarded as being in compliance with s.9 of the 1965 Act and one must thus conclude that the requesting state 'are proceeding against' Mr. Pocevicius for the offence in question".

Discussion, Further Information, Further Submissions

14. As mentioned above all formal requirements of the Act of 1965 in respect of requests for extradition have been satisfied, and this is accepted by the respondent. The respondent contests this application on one ground only and that is that the requirement in s. 9 of the Act of 1965 that the respondent be a person who "*is being proceeded against*" in the country seeking his extradition, has not been met, because, it is argued, the investigation stage of the case has not concluded and no decision has been taken to put the respondent on trial. The respondent relies upon the opinion of the Swiss lawyers that the investigation has not concluded, the fact that charges have not been brought and that in response to a direct question as to whether or not a decision had been taken to indict the respondent, the Public Prosecutor failed to confirm that this is so.

15. Both parties place reliance upon the decision of the Supreme Court in *Pocevicius*. In that case, the Kingdom of Norway sought the extradition of Mr. Pocevicius. The evidence established that the prosecution system in Norway has three levels to it, the first involves the police as prosecuting authority, which is charged with the responsibility of leading investigations and, in limited circumstances, the prosecution of offences. Serious cases however must be transferred to the Public Prosecutor upon the conclusion of the police investigation. This is the second level. The Public Prosecutor may bring 'indictments', subject to certain exceptions which are reserved solely to the Director General, the third of the three levels. The Director General brings indictments in the most serious crimes, and when these cases reach him, they come with a recommendation from the Public Prosecutor. The case of *Pocevicius* fell into the latter category and accordingly it was a matter for the Director General to make the final decision as to whether or not to indict Mr. Pocevicius. The proceedings against Mr. Pocevicius had arrived at the point where the Public Prosecutor had made a provisional assessment to the effect that, based upon the existing evidence, grounds existed for the issuing of an indictment. However, the final decision to bring forward an indictment rested with the Director General, and this decision had not been taken because it was first necessary to question the respondent in that case.

16. The court in *Pocevicius* had the benefit of an affidavit from a Mr. Haugnes, a Public Prosecutor in Norway, in which he stated: -

> *"If I were to make a recommendation today to the Norwegian Director General….on the basis of the existing evidence, I would obviously recommend that an indictment be brought against Pocevicius. On this basis, it could safely be said that it is our clear intention to bring the case against Pocevicius before the court if he is extradited to Norway.*
>
> *It is not a requirement under Norwegian law for a suspect to be questioned before bringing an indictment against him. No one is obliged to make a statement to the police in Norway and a suspect/charged person…..are also not obliged to make a statement to any Court of Justice. Consequently, an indictment may be brought without the indicted person having made a statement. However, the charged person's statement is considered so important to the total evidential situation that it would contravene best prosecution practice not to question a suspect if he/she is willing to make a statement."*

17. Even though, therefore, a final decision to issue an indictment had not been taken, and would not be taken until Mr. Pocevicius was afforded the opportunity to make a statement, there was a clear intention expressed to bring forward a case against Mr. Pocevicius, subject only to affording him the right to make a statement.

18. In this case it is submitted on behalf of the respondent that the 'clear intention' to prosecute that was present in *Pocevicius* is absent, notwithstanding an express question put to the Public Prosecutor on the issue, and it would not be appropriate for the court to draw an inference as to such an intention in these circumstances. At the conclusion of the hearing of the application, I took the view that it would be appropriate for the Court to ask the Public Prosecutor to address the question again. This was not so much affording the requesting state an opportunity to "mend its hand", but rather a recognition that different criminal justice systems operate in different ways, and it is incumbent on the Court to ensure that its decision is made with the clearest possible understanding of the criminal justice system of the requesting state, so far as is relevant to the application before the Court. In taking this view, I also took account of the following: -

    (1) That there is no doubt that there has been a very complete investigation into the events in respect of which the respondent's extradition is sought, and that investigation has already resulted in the prosecution and conviction of another party;

    (2) that the Public Prosecutor has stated that it is not 'a question of carrying out further investigations but only of carrying out this fundamental investigative measure' i.e., that required by Article 107 of the Swiss Criminal Code and;

    (3) the only reason that this measure has not already been taken is that the respondent absconded.

19. Moreover, in *Pocevicius*, McKechnie J. in addition to the text quoted from para. 48(3) of his judgment at para. 9 above, also stated that it is not a requirement for extradition that an investigation be irreversibly concluded, and at para. 48(4) he continued: -

> *"A decision to cease to prosecute, based on evidence discovered as part of any ongoing investigation is completely compatible with surrender; it could not be otherwise for if it was, it could mean that a person whose innocence was established subsequent to charge, would have to stand trial. Evidently, that could not be the case."*

20. Accordingly, even if the conduct of the procedures set forth in Articles 107, 317 and 318 of the Swiss Criminal Code resulted in a decision to cease to prosecute, that would be compatible with surrender.

21. In any case I adjourned this application so that the Public Prosecutor could answer the following questions: -

    (1) Is it the opinion of the Public Prosecutor that there is, as matters stand now, sufficient evidence to charge and try the respondent?

    (2) Has the Public Prosecutor in fact taken a decision to charge and try the respondent, subject only to compliance with Articles 107, 317 and 318 of the Swiss Criminal Code?

22. Letters putting these questions to the Public Prosecutor were sent on 30th October, 2019. The Public Prosecutor replied by letter of 11th November, 2019. He replied as follows: -

    (1) "I would like to reiterate that, as matters stand, <u>there is sufficient evidence</u> to put MATACHE Daniel Paul on trial for the offences for which his extradition is sought

    (2) as already mentioned in my letter dated 20 August 2019, before the issuing of the indictment, all the evidence taken in the preliminary procedure will be contested to MATACHE Daniel Paul and this is in his own interest and in respect of the right to be heard (art. 107 CrimPC). I confirm that no decision of indictment against MATACHE Daniel Paul has been issued yet, because it will first have to challenge all the evidence taken in the (preliminary) proceedings and this in respect of the right to be heard (art. 107 CrimPC) and in respect of the guaranteed rights foreseen in art. 317 CrimPC and art. 318 CrimPC, otherwise the issuing of the indictment and the process will be invalid".

23. The hearing of this application then reconvened on 25th November, 2019, to hear submissions from the parties in relation to the replies received from the Public Prosecutor. On behalf of the applicant, Mr. Kennedy SC, submitted that it is clear from the totality of the information received that the respondent is not sought for the purposes of investigation, but for the purpose of proceeding against him. It is submitted that the status of the respondent is that of an accused person, and not suspect. He is not sought for the purposes of further investigation. Instead, his extradition is sought for the

purpose of affording him his statutory right to be heard, and it is only following upon this that the decision to prosecute can be taken. There is however no question of further investigations.

24. In *Pocevicius*, the respondent did not have a statutory right to be heard such as the respondent has in this case. The prosecutor in that case was following what is considered to be best practice in Norway, in affording the respondent in that case the right to be heard. The prosecutor in that case had not yet taken the final decision to prosecute, for that reason, but nonetheless McKechnie J. considered that the entire process, looked at as a whole, was in compliance with s. 9 of the Act of 1965, and he concluded that the requesting state was "*proceeding*" against Mr. Pocevicius for the offence in question.

25. Mr. Farrell SC, for the respondent, submitted that the response of the Public Prosecutor did not advance matters at all. The Public Prosecutor was expressly asked if a decision had been taken to try the respondent subject only to compliance with the Swiss criminal code. He failed to answer that question and instead explained that the respondent must be interviewed (or words to that effect) before the issue of an indictment. This is to be contrasted with the much stronger statement of intention expressed on behalf of the Norwegian prosecutor in *Pocevicius* in which he said that "*it is our clear intention to bring the case against Pocevicius before the Court if he is extradited to Norway*" (see para. 16 above).

26. It is submitted that evidence in this case does not go this far. There is not in this case either a decision to try the respondent, nor a clear intention to do so. Accordingly, the applicant has failed to discharge the requirements of s. 9 of the Act of 1965.

Decision

27. In Pocevicius no decision to try had been taken, but nonetheless the extradition of the respondent was ordered. Not only that, notwithstanding that the Prosecutor Mr. Haugnes, stated in an affidavit that:-

> *"it could safely be said that it is our clear intention to bring the case against Pocevicius before the court*", that was not his decision to make and as McKechnie J. said at para. 57 "*there is no reference whatsoever as to what view the Director General might take if the evidence remains as is*".

However, McKechnie J. expressed the view that: "*The prosecution process must be looked upon as a continuum*". He noted that the Public Prosecutors in that case had advanced the process as much as they had authority to do, and that the only options open to the Director General following upon the interview of the respondent in that case were to bring forward an indictment or to bring the proceedings to an end. He was satisfied that the investigative process was over. He concluded that the requesting state in that case was "*proceeding*" against Mr. Pocevicius, and that the entire process, looked at as a whole, was in compliance with s. 9 of the Act of 1965.

28. While there are very striking similarities between the facts of this case and those in *Pocevicius*, one difference upon which the respondent places much reliance is the statement of Mr. Haugnes referred to above. This, it is submitted, constituted clear evidence to indict Mr. Pocevicius, upon which the court relied, and there is no equivalent statement or evidence in these proceedings. However, it has been clearly stated that in the opinion of the Public Prosecutor, there is sufficient evidence to put the respondent on trial, and it has been made clear that no decision to indict the respondent has been issued only because of the statutory requirements set out in Articles 107, 317 and 318 of the criminal procedure code. Significantly, the Public Prosecutor also states in his response of 11th November, 2019 to questions put by the Court that if a decision were taken to indict the respondent before compliance with these provisions of the criminal code, the issuing of the indictment and the process would be invalid. It is hardly surprising that the Public Prosecutor would be wary about saying a decision to indict had been taken, even if he qualified this by saying the decision was conditional upon compliance with statutory procedures, if there was a risk that such a statement might undermine the entire process.

29. In *Pocevicius* the procedures being followed by the Public Prosecutor were not mandated by statute, but were followed as a matter of best practice. Nonetheless, McKechnie J. accepted that the proceedings could not be brought to indictment stage until those procedures that are followed as a matter of practice in Norwegian law had been brought to a conclusion. In this case the prosecutor is obliged as a matter of law to follow the procedures set forth in the criminal code, including affording the respondent the right to be heard, before any decision to indict can be taken. The objective of the procedures to be followed prior to any decision on indictment in each case appears to be quite similar: to afford the respondent the right to be heard as regards the evidence gathered by the prosecutor, and, if necessary, to enable the Public Prosecutor to take appropriate action arising out of any information received. However, it can hardly be that the strength of the case of the applicant is weaker than that of the applicant in Pocevicius, in circumstances where in this case the obstacle to the issue of an indictment is mandated by statute, rather than in the nature of a code of practice.

30. Moreover, it is, I think, of some relevance that one of those alleged to have been in the company of the respondent on the occasion of the events, in respect of which the extradition of the respondent is sought, has already been found guilty of attempted homicide in connection with the same events. While it hardly needs to be said that cases against those involved in the commission of the same criminal acts will vary depending upon their degree of involvement, the fact that one of the other parties involved has already been charged and convicted of attempted homicide is a very clear indicator that the Public Prosecutor will proceed to issue an indictment against the respondent, having already formed the conclusion that there is sufficient evidence to bring forward the indictment, subject only to affording the respondent his statutory rights. I should add however that this factor merely serves to bolster my conclusion and is not in itself determinative of this application.

31. Counsel for the respondent very fairly submitted that this is a marginal case, but that in his submission there was insufficient evidence for the Court to arrive at the same conclusion as did McKechnie J. in *Pocevicius*. However, I cannot agree. Looking at the entire process, as McKechnie J. did in *Pocevicius*, I do not believe that there is any doubt that the requesting state is proceeding against the respondent within the meaning of s. 9 of the Act of 1965, and moreover that it intends to indict the respondent once there has been compliance with the relevant statutory procedures, but subject to anything the respondent may have to say as a result of compliance with those procedures. In other words, the respondent might yet say something in his defence that will persuade the Public Prosecutor not to issue an indictment, but as in *Pocevicius* what will follow the compliance with these procedures will either be the issue of an indictment or the cessation of proceedings altogether. Whatever may be the ultimate conclusion, I am satisfied that the surrender of the applicant is not being sought for the purposes of investigation, but is sought for the purpose of proceedings against the respondent as required by s. 9 of the Act of 1965. Being satisfied that this is so and also being satisfied that the requirements of s. 29 of the Act of 1965 have been met, I will make an order committing the respondent to prison, pursuant to s. 29(1) of the Act of 1965 pending the order of the Minister for his extradition.