

SUPREME COURT'S DECISION

Case no.

Ö 4223-19

delivered in Stockholm on 8 April 2020

REQUESTING STATE

Islamic Republic of Iran

PERSON TO WHOM THE REQUEST PERTAINS

PM

Counsel and public defender: Attorney LG

THE MATTER

Determination pursuant to Section 18 of the Swedish Extradition for Criminal Offences Act (Swedish Code of Statutes 1957:668)

THE SUPREME COURT'S RULING

The Supreme Court declares that, pursuant to Section 7 of the Swedish Extradition Act, there is an impediment to the extradition of PM to the Islamic Republic of Iran.

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LG shall receive compensation from public funds for assistance provided to PM in the amount of SEK 18,401. Of the amount, SEK 13,455 pertains to work, SEK 1,266 pertains to loss of time and SEK 3,680 pertains to value added tax. The state shall bear the cost.

The request

1. The Department General of International Affairs of the Judiciary of the Islamic Republic of Iran has requested that PM be extradited for execution of a prison sentence.

The judgment invoked

2. Iran has invoked a judgment issued on 17 August 2014 by the General Criminal Court of Esfahan, Iran. By virtue of the judgment, PM was sentenced for aiding counterfeiting to a term of imprisonment of six months and for use of false instruments to a term of imprisonment of three years. According to the judgment, PM falsely presented a person as PM's spouse at an official registration office, whereupon an official certificate of consent to travel outside Iran was issued for PM and her children. Thereafter, using false documents, she procured a passport and could travel outside the country. It is not apparent from the judgment when the alleged actions were committed. Nor is it apparent if any defence counsel was appointed to represent her at the trial or whether she was served notice to attend a hearing.

The position of the Prosecutor General and PM, etc.

3. According to the Prosecutor General, there are impediments to extradition pursuant to Sections 7, 9 and 10 of the Swedish Extradition Act. According to the Prosecutor General, extradition would also contravene Articles 3 and 6 of the European Convention on Human Rights.

4. PM has opposed extradition. She has concurred with the Prosecutor General's

assessment that there are impediments to extradition pursuant to Sections 7, 9 and 10 of the Swedish Extradition Act and that extradition would contravene Articles 3 and 6 of the European Convention on Human Rights. She has also claimed that she is at risk of the death penalty if she is extradited to Iran.

5. On 28 October 2014, the Swedish Migration Agency decided to grant PM permanent residence in Sweden and she was simultaneously declared to be a refugee (refugee status declaration). The reasons for the decision were that PM credibly established that she had been sentenced in Iran to caning which may be converted to stoning and that she was therefore at risk, upon return to Iran, of being subjected to abuse at the hands of the Iranian authorities due to her gender. The Agency determined that the abuse of which she was at risk reaches the standard of persecution and is connected to the gender refugee basis.

6. PM has not been deprived of her liberty in the extradition matter.

PM's account

7. PM denies committing the crimes. She was unaware of the judgment in question. It was due to the previous judgment in which she was sentenced to caning that she fled. If she is extradited to Iran, she is at risk of the death penalty because she now has a common law partner and, in Iran, she is not divorced from her former spouse.

Impediment pursuant to Section 7 of the Swedish Extradition Act

Generally regarding impediment due to a risk of persecution

8. Pursuant to Section 7 of the Swedish Extradition Act, extradition of an individual may not occur if, on account of his or her origin, belonging to a particular social group, his or her religious or political views, or otherwise on account of political circumstances, he or she would run the risk of being subjected in the requesting state to persecution which is directed against his or her life or freedom or is otherwise of a serious nature.

The wording of the provision largely corresponds to the definition of refugee in the 1954 Swedish Aliens Act and Chapter 4, Section 1 of the currently-applicable Swedish Aliens Act (Swedish Code of Statutes 2005:716). However, there is no total correspondence between the Swedish Extradition Act and the right to remain in the country pursuant to the Swedish Aliens Act. (See, *inter alia*, cases NJA 2017, p. 975, paras. 10-14 and NJA 2019, p. 611, para. 42.)

9. Essentially, the Swedish Extradition Act is based upon the European Convention on Extradition of 13 December 1957 (Sweden's International Agreements 1959:65). The wording of Section 7 of the Act does not, however, correspond verbatim to what is said in the Convention about when extradition must not be permitted in the event of a risk of grave persecution. The Convention does not expressly refer, for example, to persecution on account of belonging to a particular social group as a basis for refusal. In addition, in certain bilateral extradition treaties which Sweden has entered, there is no such persecution as a basis for refusal.

10. The purpose of Section 7 is to achieve concurrence between provisions on aliens and extradition in so far as they pertain to refugees. The idea was that individuals who had received a residence permit on the basis of asylum due to a risk of political persecution in a certain country generally also should not risk being extradited there. (See Government Bill 1957:156, p. 57 ff. and Karin Påle, *Villkor för utlämning* [Conditions for Extradition], 2003, p. 192.) The Swedish Extradition Act and the Swedish Aliens Act are based in relevant respects on the 1951 Geneva Convention Relating to the Status of Refugees (Swedish International Agreements 1954:55) and the definition of refugee therein.

11. The fact that an alien, with reference to the fact that he or she entertains a well-founded fear of persecution of the serious sort in a particular country, has been granted refugee status in Sweden pursuant to Chapter 4, Section 3 of the Swedish Aliens Act weighs heavily in the examination of whether there subsists an impediment pursuant to Section 7 of the Swedish Extradition Act. In any case, it applies where the risk remains at the time of the assessment of the extradition request. (See case NJA 2017, p. 975, para.

12.)

12. Since the intention of Section 7 of the Swedish Extradition Act was that it would correspond with the safeguards enjoyed by refugees in accordance with the Swedish Aliens Act, the definition of refugee pursuant to the Swedish Extradition Act is relevant to the interpretation of the provision (*cf.* Committee Report 2011:71, pp. 164 and 514 and Pålé, *ibid.*, p. 192 f.).

The 1951 Geneva Convention Relating to the Status of Refugees

13. Article 1 A (2) of the 1951 Geneva Convention defines a refugee as a person who has fled his or her country “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”. The United Nations Refugee Agency (UNHCR) has stated in its guidelines for the application of the Article that a correct interpretation of the term, “membership of a particular social group”, encompasses, *inter alia*, gender and that women may constitute an example of such social groups as are referred to by the term, “refugee”, in the Convention.¹

14. Article 33 of the Convention expresses the principle according to international customary law of non-refoulement according to which a refugee may not be returned to the country where the person would be at risk of persecution. The principle has bearing also on the area of extradition (see, for example, Committee Report 2011:71, pp. 163 and 515).

¹ See UNHCR, Guidelines on international protection: Gender-Related Persecution, para. 30 and UNHCR, Guidelines on international protection: Membership of a particular social group, para. 12 and Government Bill 2005/06:6, p. 20. *Cf.*, also, Articles 2 (d) and 10.1 (d) of the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (2011 Asylum Qualification Directive).

The definition of refugee in Chapter 4, Section 1 of the Swedish Aliens Act

15. Originally, the definition of refugee in the aliens legislation did not cover persecution on the basis of gender or sexual orientation. Persons subject to a risk of such persecution could instead be granted the status of beneficiaries of subsidiary protection.

16. In conjunction with the entry into force of the new Swedish Aliens Act in 2006, the definition of refugee in Chapter 4, Section 1 was amended such that persecution on the basis of gender was specifically covered by the definition. It was stated in the preparatory works that it was of the utmost urgency that the Swedish interpretation of the definition of refugee should be changed to adapt to the UNHCR's guidelines and definition in the applicable EU directive in force at the time, which was subsequently replaced by the 2011 Asylum Qualification Directive. Accordingly, gender, alone or in combination with other characteristics, could be deemed to constitute the basis of membership in a particular social group and that the person seeking protection from such persecution could be granted refugee status. The same assessment was made regarding sexual orientation. It was observed that the wording of the definition of refugee in Chapter 4, Section 1 would deviate in relation to the definition in the 1951 Geneva Convention, but the formulation was not deemed to entail any substantive deviation. (See Government Bill 2005/06:6, pp. 25 and 32.)

Persecution due to gender and Section 7 of the Swedish Extradition Act

17. The provision in Section 7 of the Swedish Extradition Act contains no express reference to persecution due to gender. However, there are compelling reasons why the term, "membership of a particular social group", should also be deemed to cover gender.

18. The Supreme Court has made the assessment that a risk of persecution on the basis of sexual orientation may fall within the collective term, "membership of a particular social group", in Section 7 (see the decision of the Supreme Court of 10 June 2019 in case Ö 795-19). As mentioned, persecution on the basis of sexual orientation has been addressed by the legislature in a similar manner as persecution based on gender (see

para. 16).

19. The purpose of the provision in Section 7 was to achieve coherence between the aliens and extradition provisions regarding the definition of refugees. Interpreting Section 7 such that the term, “membership of a particular social group”, also covers gender means that the purpose of the provision is achieved and such an interpretation is in line with Sweden’s commitment under the 1951 Geneva Convention. The interpretation entails that the basis for refusal relating to persecution will not align completely with the wording of the Extradition Convention and certain bilateral extradition agreements to which Sweden is a signatory (*cf.* para. 9). However, it cannot be deemed to be in contravention of Sweden’s international extradition obligations (*cf.* Committee Report 2011:71, p. 517).

20. The conclusion is that gender, in a way comparable to sexual orientation (see para. 18), is covered by the collective term, “membership of a particular social group”, within the meaning of Section 7. The risk of persecution due to gender or sexual orientation accordingly constitutes an impediment to extradition.

The assessment in this case

21. It is apparent from the investigation in this case that the situation regarding the respect for human rights in Iran is grave. There is extensive discrimination of women also by legislation. For example, a woman’s testimony carries only half the evidentiary value, and the possibility for women to obtain a divorce is limited. Caning is a common sanction for, for example, morality offences. (See the report of the Swedish Ministry of Foreign Affairs, *Mänskliga rättigheter, demokrati och rättsstatens principer i Iran 2015-2016* [Human Rights, Democracy, and Principles of the Rule of Law in Iran 2015-2016], pp. 6 f. and 12 f.)

22. PM enjoys refugee status and nothing has emerged other than that the stated reason for refugee status persists. The investigation in the case shows that PM’s life or freedom, due to her gender, is at risk of persecution in Iran. Accordingly, there is an

impediment to extradition pursuant to Section 7 of the Swedish Extradition Act.

23. Given this assessment, the Supreme Court has no reason to comment on whether or not there are other impediments to extradition in accordance with the Swedish Extradition Act or whether an extradition of PM to Iran would be incompatible with the European Convention on Human Rights.

Justices of the Supreme Court Gudmund Toijer, Ann-Christine Lindeblad, Johnny Herre, Malin Bonthron and Stefan Reimer (reporting Justice) participated in the ruling.
Judge Referee: Johan Isaksson