SUPREME COURT'S DECISION

Case no.

delivered in Stockholm on 21 December 2021

Ö 5550-21

REQUESTING STATE

Republic of Rwanda

PERSON TO WHOM THE REQUEST PERTAINS

JPM

Public defender: Attorney TB

Public defender: Attorney HLR

THE MATTER

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

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THE SUPREME COURT'S RULING

The Supreme Court declares that there is no impediment pursuant to the Extradition Act to the extradition of JPM to Rwanda. In addition, an extradition is not incompatible with the Convention for the Protection of

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Human Rights and Fundamental Freedoms or the United Nations Convention on the Rights of the Child.

TB shall receive compensation from public funds for the representation of JPM in the amount of SEK 731,301. Of the amount, SEK 350,550 relates to work, SEK 171,990 relates to loss of time, SEK 62,501 relates to outlays and SEK 146,260 relates to value added tax. The state shall bear the cost.

HLR shall receive compensation from public funds for the representation of JPM in the amount of SEK 619,800. Of the amount, SEK 417,525 relates to work, SEK 76,715 relates to loss of time, SEK 1,600 relates to outlays and SEK 123,960 relates to value added tax. The state shall bear the cost.

JPM shall continue to be detained in the extradition matter.

The secrecy provision in Chapter 18, Section 17 of the Public Access to Information and Secrecy Act (2009:400) shall continue to apply to the information relating to the criminal investigation.

REASONS FOR THE DECISION

The request

1. The Republic of Rwanda has requested that JPM be extradited there for trial.

The alleged criminal activity

2. In support of the request for extradition, Rwanda has adduced an international arrest warrant and an indictment both issued by the Prosecutor General in Rwanda on 17 December 2020. It is apparent from the appended documents that charges were brought against JPM for the following acts committed between 6 April and July 1994 in Rwanda:

a) genocide by killing members of the Tutsi ethnic group,

b) genocide by causing serious bodily and mental harm to members of the Tutsi ethnic group,

c) complicity in genocide, and

d) crimes against humanity by rape.

The position of the Swedish Prosecutor General and JPM

3. According to the Prosecutor General, there is no impediment to extradition according to the Extradition Act. Furthermore, the Prosecutor-General has stated that an extradition would not be in contravention of the European Convention on Human Rights or the Convention on the Rights of the Child.

4. JPM has opposed extradition. He has claimed that there is an impediment to extradition in accordance with Sections 7–9 of the Extradition Act and that an extradition would be incompatible with Articles 3, 6 and 8 of the European Convention on Human Rights and Articles 3, 6, 9 and 10 of the Convention on the Rights of the Child.

5. In the extradition matter, JPM has been deprived of liberty by being under arrest or detained since 17 November 2020.

JPM's version

6. JPM denies liability and has, in summary, stated the following.

7. He was born in 1972 in Kigembe and is the son of AN. When the genocide started in 1994, he was a student at the university in Butare.

8. A war broke out in Rwanda in 1990. At the beginning, he was loyal to the party Rwandan Patriotic Front (RPF) and, in 1993, he set out to northern Rwanda in order to participate at a camp arranged by the party. The purpose was to collect money and disseminate information to young people. They used various sporting activities as a cover. RPF's chairman, the current President of Rwanda PK, participated.

9. The regime began looking for those persons who had been at the camp. On 7 April 1994, the head of the delegation was killed and, subsequently, so was JPM's brother. JPM became very frightened given that the regime also knew that he was involved in RPF. He hardly dared to go out. Nothing happened in Butare for a period of three to four weeks. He attempted to obtain information of what was going on, but everything was closed. The bar, Chez Ngoga, which is referred to in the investigation, was close to his home. The bar was approximately 20 metres from a road crossing, and was more like a small shop at which one could purchase beer. People gathered there in order to obtain information. Following 6 April 1994, there were roadblocks everywhere. The President lived approximately 200 metres from his home. According to the information he received, the regime attempted to set up a protective zone around the President and that this was the reason why one road at the crossing had been closed off.

10. He left Rwanda at the end of May and fled to Congo. Due to the conflict in Burundi, which had started in 1993, there were also many Burundians in Congo. Together, they engaged in the Palipehutu-FNL (FNL). JPM hoped that the situation in Rwanda would calm down so that everyone could return home. He knew many people who had trucks or boats which is why he worked in logistics during the war.

11. After a number of years, he made his way to the Netherlands. When VI came there she succeeded through her then party Forces Democratiques

Unifiées (FDU) to unify all the small opposition parties. He got to know other Rwandans there. They had organised and, as a cover, created a group for traditional dance and he participated in the activities. They disseminated letters with political content and arranged demonstrations.

12. Eventually, he decided to go to Burundi since his father-in-law at the time, *inter alia,* would help him obtain work. His father-in-law arranged a passport and ID card. JPM's birthday was changed so that he would have a better chance of being accepted into the paramilitary forces. When JPM was in Guinea, his father-in-law was murdered and he then travelled to Sweden.

13. He applied for asylum here, met his current wife, started a family, worked and studied. He continued to be politically engaged in the FDU and often returned to the Netherlands to participate in political activities. He also visited Great Britain for a period of one week and then carried out political work for the FDU. He has not spoken of this before since it is sensitive information. He has been politically engaged the entire time, but he has not conducted political activities in Sweden.

14. JPM is aware that he has provided various information. However, he has always been on the run and has been afraid of being sent back to Rwanda in light of the fact that the regime views him as a traitor and an enemy. The fact that he denied involvement with the FNL is due to the fact that he believed that it would make it easier to obtain Swedish citizenship. While being questioned by the police in January 2021, he was shocked by the accusations and needed to weigh his words since he did not know who was behind the questioning.

15. The accusations against him are untrue. However, this is how the regime in Rwanda works. It fabricates evidence and makes accusations against political dissenters. He does not know who has testified against him, but he

might recognise certain names. He had not heard about the committee (*Comité de crise*) referred to in the indictment before he received the documents in the extradition matter.

Evidence adduced by JPM

16. In addition to written evidence, JPM has adduced examination of witnesses BR and PL.

BR

17. BR is an attorney in Norway and has, in summary, stated the following.

18. He has worked with matters concerning Rwanda since 2013. He was counsel in the Norwegian extradition matter in which the Ministry of Justice and Public Security in 2020 refused extradition to Rwanda.

19. There were indications of false testimony in that case, but the Norwegian police were not particularly interested in investigating the issue further. Accordingly, BR conducted his own investigation in Rwanda in order to verify the testimony.

20. He had a list of the witnesses with whom he wished to speak and attempted to take direct contact with them as far as possible. Some of them were contacted directly by an interpreter and certain of them by the suspect's brother. The witnesses received information regarding the purpose of the interviews and BR was clear that he represented the suspect.

21. BR had checked what the witnesses had said in other trials involving the same events relevant to his case. He discovered that the witnesses said different things on different occasions and he had the impression that the witnesses had adapted their answers according to what was expected of them and that the starting point was that the suspect was guilty.

22. Six witnesses told him that they had provided false information, and an additional five stated that they had been pressured. According to BR, there was clear evidence that an additional 13 persons had provided false information.

23. As regards the reason for the false testimony, there are circumstances which suggest a connection to conflicts in the Rwandan diaspora in Norway. Among other things, a list of the people who had allegedly committed genocide circulated.

24. Most of those who provided false information explained that they had been sought out by local government personnel in Rwanda. BR has no evidence that influencing of witnesses had taken place at a central level, but there were certain indications of central coordination.

25. BR believes that it is not possible to obtain a fair trial in Rwanda and that such is the case irrespective of whether the accused is a political opponent of the regime or not.

PL

26. PL is an attorney in Canada and has explained, in summary, the following.

27. Since 2001, he has represented a number of persons who have been accused of genocide in Rwanda, among others, JB who was the Minister of Foreign Affairs during the genocide. PL currently works as defence counsel for PR, but is prohibited from representing him in Rwanda.

28. In the trial against JB, there were tens of false witness statements. However, he had an alibi and was released. The witnesses had been coached to provide false testimony by the prosecutors in Rwanda.

29. The problem of false accusations is quite widespread in Rwanda and it is difficult to detect. It is not only high-profile persons who may be subjected to false accusations. PL has represented a person who was subjected to it and, at the time of the genocide, was in his 20s, worked as an art teacher and was not politically active.

30. It is easy to obtain false testimony in Rwanda and there are various reasons why witnesses lie. Certain are pressured or threatened. Others hope for economic advantages. The population of Rwanda is so poor that it is possible to obtain false testimony in exchange for a beer or a meal. Some provide false testimony for revenge. Persons who are imprisoned may receive lighter sentences if they testify.

31. In Rwanda, the bar association is subordinate to the state, and Rwandan attorneys do not dare to fully protect the interests of their clients for fear of being punished by the regime. It is also very difficult for the defence to adduce its own evidence.

32. He doubts that anyone extradited to Rwanda can obtain a fair trial, and has seen no advances in the Rwandan judiciary in 20 years.

Reports regarding the legal system in Rwanda

Report of the Ministry for Foreign Affairs

33. From the report *Rwanda – Mänskliga rättigheter, demokrati och rätts-statens principer: situationen per den 30 juni 2019* [Rwanda – Human Rights, Democracy, the Rule of Law: The Situation as of 30 June 2019] the following, *inter alia*, is apparent.

34. Rwanda remains marked by the genocide of Tutsis. The government often responds to criticism of the lack of respect for human rights with

reference to the genocide and the importance of national unity in order to ensure that nothing similar ever happens again.

35. Rwanda's constitution prescribes a division of power and that the judicial system is to be independent. This is maintained to a relatively large extent at a lower level, while the independence of the higher courts sometimes fails. Among other things, information has come to light that government officials have attempted to influence politically sensitive cases.

36. Trials in Rwanda are, according to law, public and the accused is entitled to legal counsel. The accused is deemed to be innocent until proved otherwise. However, there is a tradition of the media and police publicly displaying suspects in connection with detention.

37. Rwanda's prisons are over-populated, primarily due to the large number of persons who have been convicted of genocide crimes. In the last ten years, the conditions of the prisons have gradually improved. Previously, a life sentence in prison in isolation was allowed, but the possibility to impose this penalty was removed in the new Rwandan penal code which entered into force in 2018.

38. Torture is prohibited according to the constitution and special legislation. International civil society organisations which work with human rights have learned, however, that the police, military and security service have used torture or other inhumane treatment. There are few but recurring reports of forced disappearances and extra-judicial executions.

International reports, etc.

39. The information set forth in the account provided by the Ministry for Foreign Affairs is supported by reports from, *inter alia*, Human Rights Watch, the US Department of State, Bertelsmann Stiftung and Freedom House.

40. The following is also apparent from the reports from Human Rights Watch, “World Report 2021: Rwanda, Events of 2020”, and the US Department of State, “2020 Country Reports on Human Rights Practices: Rwanda”. Fair trial standards were routinely flouted in many sensitive political cases in which security-related charges are often used to prosecute prominent government critics. Domestic and international observers have noted that the outcome in high-profile genocide cases and in politically sensitive cases appear to be predetermined. Some lawyers do not wish to work with politically sensitive cases.

41. In the report from Bertelsmann Stiftung, “BTI 2020 Country Report Rwanda”, furthermore, the following is stated. Although the constitution provides for an independent judiciary, in practice, the courts are susceptible to government influence and manipulation. The judiciary has an important political function. Critics and opponents, considered to be dangerous by the regime, face fabricated charges of genocide, revisionism, genocide ideology, corruption, terrorism and immoral behaviour. The judiciary is the tool by which the government perpetuates authoritarian rule by prosecuting opponents and critics.

42. Other materials have also been adduced to shed light on the legal system in Rwanda, *inter alia*, “Additional Expert Report re: Rwanda v. Banjinya and others” dated 3 June 2015, by MW, then advisor to the National Public Prosecution Authorities in Rwanda. In it, MW confirms his previous position that Rwanda has a functioning justice system which, as regards charges of genocide in cases which have been transferred from other jurisdictions, applies international standards and provides fair trial rights for defendants. However, he expresses a deep concern regarding the deficiencies and sub-standard quality which he has observed in conjunction with the defence of accused in a number of genocide trials. The report concludes with a

recommendation to the jurisdictions that extradite or transfer defendants to Rwanda to provide the defendant with defence counsel who are knowledgeable and able to, *inter alia*, conduct their own investigations.

The requirement of dual criminality in accordance with Sections 1, 4 and 10 of the Extradition Act

Generally regarding the requirement of dual criminality

43. As a rule, extradition presupposes that the act or acts for which extradition is requested correspond to an offence for which imprisonment for one year or more is prescribed by Swedish law (Section 4 of the Extradition Act).

44. The provision in Section 4, together with Section 1 – according to which it is necessary that the person sought is suspected, accused or sentenced for an act which is punishable in the requesting state – expresses a requirement of dual criminality. In addition, the requirement that the crime is not statute-barred according to Swedish law, set forth in Section 10, second paragraph, may be said to constitute a part of the requirement of dual criminality.

45. However, no detailed examination of whether the act or acts are criminal in accordance with the legislation of the requesting state is to be carried out; it is sufficient that the requesting state is of this position and refers to relevant legislation. Where, on the other hand, it is clear that a sentence may not be imposed in the requesting state, extradition is not to take place (*cf*. Government Bill 1957:156, p. 45).

46. In conjunction with an examination in accordance with Section 4 of whether a certain act corresponds to an offence according to Swedish law, the classification is not decisive. The central consideration is that the specific act

forming the basis of the request for extradition constitutes an offence in an assessment according to Swedish law.

It is not clear that the act is not punishable according to Rwandan law

47. Rwanda has submitted an extract from the country's penal code (68/2018) and stated that the acts are criminal in accordance with Articles 91–95, and that it is apparent from Article 106 that genocide and crimes against humanity are not subject to statutes of limitations.

48. In light of the limited examination to be performed by the Supreme Court in this respect, there is no reason to question this assessment (see para. 45). Accordingly, it is not clear that JPM cannot be punished in Rwanda.

The offences for which JPM is suspected correspond to offences according to Swedish law

49. All of the acts for which extradition of JPM is requested correspond to some offence regulated in the Act on Criminal Responsibility for Genocide, Crimes Against Humanity and War Crimes (2014:406) (the Act on Criminal Responsibility for Genocide, etc.).

50. The acts set forth in Sections 2 a) – c) can, according to Swedish law, be regarded as genocide in accordance with Section 1, first paragraph (1) and (2) and instigating or aiding such offence.

51. The acts set forth in Section 2 d) may, according to Swedish law, be regarded as crimes against humanity in accordance with Section 2, first paragraph (3) of the Act on Criminal Responsibility for Genocide, etc. However, they may also be regarded as genocide in accordance with Section 1, first paragraph (2) of the same Act (see Government Bill 2013/14:146, p. 236 f.).

The crime is not statute-barred according to Swedish law

52. Extradition may not occur for an act which is statute-barred according to Swedish law (Section 10, second paragraph of the Extradition Act).

53. Such acts of which JPM is suspected cannot be time-barred nowadays (see Chapter 35, Section 2, first paragraph (5) of the Criminal Code). However, the acts were allegedly perpetrated in 1994. At that time, the Punishment for Genocide Act (1964:169) was in force. The acts for which the extradition of JPM are requested could also, according to that act, constitute genocide and instigation or aiding such offence. The range of punishments included life in prison and the limitation period was 25 years.

54. The limitation period for genocide was removed in 2010. It was stated in the transitional provisions that the new provisions would be applied also to offences committed prior to the entry into force unless the possibility to impose a sanction had expired prior thereto in accordance with older provisions. In connection with the implementation of the Act on Criminal Responsibility for Genocide, etc., in 2014, genocide and crimes against humanity, among others, were exempted from the application of a time bar. The transitional provisions were formulated in a manner comparable to that in 2010.

55. Thus, none of the acts for which the extradition of JPM is requested is time-barred.

The requirement of a detention decision and certain evidence in accordance with Section 9 of the Extradition Act

Generally regarding the requirement of a detention decision and certain evidence

56. An extradition for legal proceedings presumes that the request is based on a detention decision which has been issued by a competent authority in the requesting state. When – as in this case – Sweden and the requesting state have not entered into such an agreement as is referred to in Section 9, third paragraph of the Extradition Act, there is a further requirement that there is probable cause that the person has committed the relevant act. (See Section 9, second paragraph). The legislature has thus imposed the same requirement for evidence as normally applies to detention according to Swedish law.

57. A detention decision is not sufficient in and of itself if the person for whom extradition is requested denies that he or she is guilty of the alleged offence and provides credible grounds therefor (see Government Bill 1957:156, p. 65).

58. As a rule, the documentation presented in a request for extradition is more extensive than that presented in a request for detention within the context of a Swedish criminal trial. When more extensive documentation has been presented in the extradition matter in this manner, it is as a rule required, in order for probable cause not to exist, that there is some circumstance forming the basis for calling the investigation into question. Such circumstances may consist, *inter alia*, of uncertainties or inconsistencies unrelated to the fact that an examination is being carried out at an early stage of the proceedings. Relevant to the assessment may also be what is known regarding the legal system in the requesting state. (See, for example, case NJA 2019, p. 611, para. 38.)

The request for extradition is based on a detention decision and there is probable cause for believing that JPM has committed the acts

59. In support of its request for extradition, Rwanda has adduced a decision taken by a competent authority and which may be deemed to correspond to a detention decision.

60. In support of the request for extradition, an indictment and a document stated to constitute a summary of the facts and evidence have been adduced. The material consists of synopses of witness examinations of eighteen persons. Several of these witnesses, of whom some may be assumed to be aggrieved parties in accordance with Swedish law, allegedly saw JPM carry out a number of the various elements of the acts covered by the indictment.

61. As JPM has pointed out, there are some doubts about the testimony. This is so in respect of, *inter alia*, the extent to which certain witnesses themselves have witnessed the events or merely give an account of what others have stated. In addition, as regards some of the testimony, it is unclear to which elements of the acts they pertain. In addition, as is often the case in a request for extradition, there is no information regarding when and where the witness examinations took place and whether they were video or audio recorded. Taking into account the stage of the investigation in Rwanda, however, such circumstances should not be ascribed any decisive weight.

62. In addition, JPM has pointed out that several of the persons with whom he allegedly committed the acts have been found guilty of genocide in trials and that his name was not mentioned in any of the cases. Furthermore, he has asserted that the witnesses are not independent, that several of them have served sentences, that there are personal connections and relationships which have not been described, and that the testimony contains several errors in addition to the information that he committed the acts.

63. It is not possible to draw any conclusions from the fact that JPM's name has not been mentioned in any of the trials and the circumstances asserted which may give rise to doubts regarding the value of the testimony have been general and difficult to assess.

64. Furthermore, it should also be kept in mind that JPM has affirmed that he was, in any case during the period of time between 6 April until the end of May 1994, in the area in which the acts allegedly took place. In addition, it cannot be ignored that, in the report adduced by the Prosecutor General from Human Rights Watch, "Leave None to Tell the Story", published in March 1999, it is stated that AN's son, M, was a university student who organised a group of young persons, most of them from Burundi, to monitor a road block in front of a bar which was known as Chez Ngoga and that they killed many people (see p. 325).

65. Against this background, the investigation – also taking into account what is known regarding the legal system in Rwanda – may be deemed to be such that the requirement of probable cause has been met.

Impediment to extradition in accordance with Section 7 of the Extradition Act due to a risk of persecution

Generally regarding impediments due to risk of persecution

66. According to Section 7 of the Extradition Act, extradition may not occur in respect of a person who, 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 foreign state to persecution which is directed against his or her life or liberty or is otherwise of a harsh nature. The provision largely corresponds to the definition of *refugee* in the 1954 Foreigners Act and

Chapter 4, Section 1 of the current Foreigners Act (2005:716). (See, *inter alia*, case NJA 2020, p. 426, paras. 8–12.)

67. In order for Section 7 to prevent extradition, it is necessary that there is a basis for finding that there is a specific risk of persecution. In conjunction with political persecution, the risk is to be based on the relevant person's political views or at least the fact that the requesting state assumes that he or she has a certain political view. Thus, it is not sufficient that the circumstances in the country in general are politically troublesome and that there is persecution of political opponents.

There is no impediment to extradition due to a risk of persecution

68. It is apparent from the investigation that Rwanda persecutes and even tortures and executes persons who are part of the political opposition.

69. JPM has stated that he will be persecuted and is at risk of being subjected to torture or killed if he returns to Rwanda. He has claimed that he has been politically active since he left Rwanda and has specifically emphasised his membership and participation in FNL and the contacts with VI and his participation in her party.

70. It is apparent from the investigation in the matter and what JPM has told the Supreme Court that he has changed his account of his political activities on several occasions. Naturally, this may have several reasons. However, irrespective of the reason, the account is thoroughly sweeping and scanty. Furthermore, there are no other circumstances, other than an FNL membership card, which provide any actual support for his assertions. Against this background, it cannot be deemed shown that there is a specific risk that JPM is at risk of being subjected to persecution due to his political views if he is extradited to Rwanda.

Impediment to extradition in accordance with Section 8 of the Extradition Act due to standards of human treatment

71. Extradition may not be granted in a particular case where, in view of the youth, state of health or any other personal circumstances of the person concerned, due account also being taken of the nature of the act and the interests of the foreign state, it is considered to be manifestly incompatible with basic standards of human treatment. It is primarily humanitarian reasons relating to the person him or herself – not persons closely related to him or her – which may be considered in the assessment in accordance with the section (see, *inter alia*, case NJA 2019 N 6, para. 10). What has come to light regarding JPM's personal circumstances does not support the notion that extradition would be manifestly incompatible with basic standards of human treatment. Accordingly, there is no impediment according to Section 8.

The European Convention on Human Rights

Article 3 – prohibition of torture and other inhumane treatment

72. Article 3 of the European Convention on Human Rights provides that a state may not extradite a person to another country if there are compelling reasons to believe that he or she is subject to a real risk of being subjected in that country to torture or other inhumane or degrading treatment or punishment. The fact that a state is considered to have a totalitarian system and often infringes human rights typically does not constitute sufficient grounds for assuming that extradition is in contravention of Article 3 (see case NJA 2017, p. 677, para. 14). What is to be assessed is the individual risk faced by the person for whom a request for extradition is made.

Extradition of JPM would not be in contravention of Article 3 of the European Convention on Human Rights

73. As stated above, there are a number of reports in which it is stated that torture and other treatment in contravention of Article 3 occur in Rwanda (see paras. 33–42). The specific information in the reports, however, pertains primarily to rather high-profile political opponents. As previously observed, the Supreme Court has found that the investigation does not support the notion that JPM would be at risk of being subjected to persecution due to his political views if he was extradited to Rwanda (see para. 70). In addition, there is nothing in the investigation that shows that persons who do not belong to the political opposition and who have been extradited to Rwanda to be tried for genocide have been treated in contravention of Article 3.

74. The material in and of itself contains information regarding tough prison conditions. However, it appears that the prison conditions for persons extradited to Rwanda are relatively good (see, for example, the observation report of the International Commission of Jurists regarding Jean Claude I).

75. In summary, the aforementioned entails that there is insufficient support for the notion that extradition of JPM would be in contravention of Article 3.

Article 6 – the right to a fair trial

76. As regards the issue of whether extradition can contravene Article 6 of the European Convention on Human Rights, the European Court of Human Rights has stated in its case law that it cannot be excluded that an extradition decision might exceptionally contravene Article 6. This is so if the circumstances are such that the person to be extradited risks suffering a flagrant denial of a fair trial in the requesting country (*cf. Soering v. the United Kingdom*, 7 July 1989, § 113, Series A no. 161; see, also, cases NJA 2009, p. 280 and NJA 2017, p. 677, para. 17).

77. In order for an extradition for legal proceedings to contravene Article 6, it is required that a breach can be expected of the principles of fair trial which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article.[1] In principle, it is incumbent on the person claiming that extradition would be in contravention of Article 6 to show that such is the case. (See case NJA 2017, p. 677, paras. 16–19.)

78. The European Court of Human Rights' formulations are very restrictive and it may be argued whether they are to be read quite literally. However, it is clear that the threshold is high in order for an extradition to be incompatible with Article 6 of the European Convention on Human Rights. (See case NJA 2019, p. 611, para. 54.) In the European Court of Human Rights' guide to Article 6, updated on 31 August 2021 (see, also *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09,§ 259, 17 January 2012), it provides as examples of situations in which the rights guaranteed by the Article have been entirely nullified those *in which* the defendant has been convicted *in absentia* with no right to a new trial, *in which* it was a summary trial with total disregard for the rights of the defence, *in which* someone was detained without any access to independent and impartial examination of the legality of the detention, *in which* there is a deliberate and systematic refusal of access to defence counsel, *and in which* it involved the use of testimony obtained by torture.

79. According to the Extradition Act, the Supreme Court is to express an opinion whether the extradition may be legally granted. It is then appropriate for the Court to examine the question on the basis of the restrictiveness

[1] See *Ahorugeze v. Sweden*, no. 37075/09, § 115, 27 October 2011: "breach of the principles of fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article". See, also, *Othman (Abu Qatada) v. the United Kingdom*, no. 8139/09, § 260, 17 January 2012.

expressed in the case law of the European Court of Human Rights. On the other hand, the Government may ascribe in its decision greater weight to the interest protected by the Convention than that which follows from such basis. (See case NJA 2009, p. 280.)

An extradition of JPM would not be in contravention of Article 6 of the European Convention on Human Rights

80. As previously stated, it is apparent from several reports regarding the judiciary in Rwanda that legal security guarantees have been regularly ignored in many politically sensitive trials in which security-related charges have been used in order to prosecute prominent government critics. Domestic and international observers have noted that the outcome of high-profile cases relating to genocide appear to be predetermined. (See paras. 33–42.) However, the reports may not be deemed to constitute sufficient basis for the finding that every trial relating to genocide in Rwanda would so clearly derogate from a standard which is acceptable according to Article 6 that, irrespective of who is on trial, it prevents extradition.

81. It is apparent from the investigation that there are cases in which states, with reference to Article 6, have refused to extradite persons to Rwanda for legal proceedings. The rulings which have been adduced are, above all, a judgment from the High Court of Justice in the United Kingdom of 28 July 2017 and a decision from the Ministry of Justice and Public Security in Norway of 13 May 2020.

82. Also these cases cannot be deemed to lead to the conclusion that every trial relating to genocide in Rwanda will clearly derogate from the standard which is acceptable according to Article 6 such that it is not possible in any event to extradite persons to Rwanda for legal proceedings there.

83. The matter before the High Court of Justice (2017 EWHC 1912, Admin) pertained to extradition of five persons to Rwanda who were regarded as being of interest to the regime. The court stated that the five persons could not, in a general sense, be regarded as active political opponents of the regime, but pointed out that they are high-profile suspects who, with one exception, are people with involvement in authority during the period of the genocide. The court stated that, even if the suspects could not be regarded as first-rank political opponents, one or more of them might be subjects of interest to the authorities and thus lead to pressure on the judiciary. (See para. 372.) The court attached particular weight to the deficiencies in the Rwandan judiciary and the fact that there was no possibility in Rwanda to obtain access to effective defence and that there was a risk that the suspects would not have adequate conditions to examine their own witnesses. (See, in particular, paras. 375–384.)

84. As regards the Norwegian decision (see the Ministry of Justice and Public Security, ref. 15/1884-SIHO), BR was counsel for the person for whom extradition was requested. The ministry stated that the investigation which BR had conducted in Rwanda had as a consequence that it could not be excluded that witnesses had been influenced in the matter. The new material was intended to give rise to doubts as to whether the basis of the suspicions was sufficient. Furthermore, the ministry found, with reference to the judgment from the High Court, that it could be questioned whether the person for whom extradition was requested could obtain a fair trial. The ministry emphasised that the assessment was made following a concrete, overall evaluation of the special circumstances in the matter and that extradition to Rwanda in other matters would not necessarily be in contravention of Article 6.

85. Accordingly, it is apparent that both of these matters in certain respects are distinct from the matter in respect of which the Supreme Court is now to

render an opinion. The investigation in this matter does not support the conclusion that JPM is an active political opponent of the regime in Rwanda or that he in some other manner has been of particular interest to it. Furthermore, there are no concrete circumstances in support of the notion that witnesses have been influenced or that false testimony had been given regarding the indictment against him.

86. In addition, it should be pointed out that the information provided by BR and PL does not specifically address JPM's possibilities to obtain a fair trial. BR and PL's testimony has related to their experiences of the legal system in Rwanda and the assessments made by them in a general sense relating to the possibilities of obtaining a fair trial there.

87. It may be added that there are examples of courts in other states having found that there is no impediment to extraditing persons to Rwanda for legal proceedings regarding genocide. For example, in 2021, this occurred in the Netherlands in two cases.[2]

88. Taking into account what has been presented above, it has not, in the assessment to be made by the Supreme Court, been shown that a trial against JPM in Rwanda involves a risk of so clearly derogating from a standard which is acceptable according to Article 6 that it prevents extradition.

Article 8 – the right to respect for private and family life

89. According to Article 8 of the European Convention on Human Rights, everyone has the right to respect for his or her private and family life, his or her home and his or her correspondence. The right is not absolute. A public authority may interfere with this right in accordance with law where it is

[2] See *Rechtbank Den Haag*, 30 April 2021, ECLI:NL:RBHDA:2021:4457 and *Gerechtshof Den Haag*, 4 May 2021, ECLI:NL:GHDHA:2021:763.

necessary in a democratic society for, *inter alia*, the prevention of disorder or crime.

90. If a family is at risk of being separated as a consequence of extradition, the question of whether extradition is compatible with the right to respect for private and family life according to the European Convention on Human Rights arises provided that there is a family formation which enjoys the protections of the Convention and that extradition entails interference with such protection. Under such circumstances, an examination must be made as to whether the measure is justifiable, i.e. if the detriment suffered by the relevant person is in reasonable proportion to the purpose the state seeks to achieve.

91. The European Court of Human Rights has, with reference to the significance of the cooperation between states in extradition matters, stated that exigent circumstances are necessary in order for the right to respect for family life to outweigh the legitimate aims which support extradition. Accordingly, the case law of the European Court of Human Rights imposes particularly stringent requirements in order for extradition to be deemed incompatible with the European Convention on Human Rights on the currently relevant ground. (See the "*Cartridge and the Car*" case, case NJA 2020, p. 761, para. 17 and references therein.)

An extradition of JPM would not be in contravention of Article 8 of the European Convention on Human Rights

92. The extradition of JPM has been requested in order to pursue legal proceedings against him in Rwanda for particularly grave offences. The circumstances are accordingly not such that extradition of him would be incompatible with Article 8 of the European Convention on Human Rights.

Convention on the Rights of the Child

93. Articles 1–42 of the Convention on the Rights of the Child apply as Swedish law (see the United Nations Convention on the Rights of the Child Act, 2018:1197). Accordingly, in extradition matters, an examination must be carried out as to whether extradition in the particular case will have consequences for a child in a manner according to which extradition is incompatible with the rights assured the child in accordance with the Convention.

94. Extradition from Sweden may concern a child in two ways, either in that the child him or herself is the subject of the extradition proceeding or in that one of the parents is. In both cases, the principle regarding the best interests of the child is to be considered in the assessment of the extradition matter. The best interests of the child shall thus at all times be investigated, taken into consideration, and assessed when extradition from Sweden concerns the child's right.

95. In extradition matters, the child's best interests are balanced against the interest of other states in prosecuting perpetrated offences and to implement sentences. In most cases, when extradition is pertinent, Sweden has adhered to binding international law undertakings. The interest of other states in being able to prosecute offences and to implement sentences constitutes such a compelling public interest that the best interests of the child, in many cases, must give way in a legal examination in which a balancing must be carried out between the child's best interests and the interests in upholding the system of extradition for offences. (See the "*Cartridge and the Car*" case, para. 24.)

Extradition of JPM is not incompatible with the Convention on the Rights of the Child

96. Before he was taken into custody, JPM lived together with his wife and their two children. He has participated in the daily care of the children. The starting point for the assessment must be that his children have a need for close contact with their father and that consideration of the best interests of the child suggest that JPM is not to be extradited to Rwanda.

97. However, Rwanda's interest in being able to prosecute persons who are suspected of participating in the 1994 genocide and Sweden's obligation to live up to its international law undertakings must be pitted against the interests of the children. It may be added that there is reason to assume that contacts between the children and their father may be arranged in some form, even if JPM is extradited. Against this background, the opposing interests weigh more heavily than the interests of the children. Accordingly, extradition is not incompatible with the Convention on the Rights of the Child.

Conclusions

98. There is no impediment to extradition of JPM to Rwanda.

99. However, the investigation shows that the legal system in Rwanda has grave deficiencies. Thus, there is cause for the Government, in the event it resolves to extradite JPM, to carefully monitor his trial and how he is otherwise treated there.

Justices of the Supreme Court Kerstin Calissendorff, Stefan Johansson (reporting Justice), Eric M. Runesson, Stefan Reimer and Cecilia Renfors participated in the ruling
Judge referee: Elin Dalenius