



# Supreme Court's DECISION

delivered in Stockholm on 12 July 2024

Case no.  
B 8069-23

## REQUESTING STATE

Republic of Türkiye

## PERSON TO WHOM THE REQUEST RELATES

SU

Counsel and Public Defender: Attorney JN

## THE MATTER

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

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## 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 SU to the Republic of Türkiye, and that his extradition would also be in violation of Article 3 of the ECHR.

The secrecy provision in Chapter 21 Section 1 of the Public Access to Information and Secrecy Act (2009:400) shall continue to apply to such information that is contained in the torture-injury report (File Appendix 39) and that has been submitted in camera, but only in so far as the information is not included in this ruling.

JN shall receive compensation from public funds of SEK 460,616 for the representation of SU in the Supreme Court. Of the amount, SEK 222,684 relates to work, SEK 91,280 relates to loss of time, SEK 54,529 relates to outlays and SEK 92,123 relates to value added tax. The state shall bear the cost.

## **EXTRADITION REQUESTS, ETC.**

### **The requests**

The Republic of Türkiye has requested that SU be extradited there for execution of a prison sentence.

### **The position of the Prosecutor General and SU, etc.**

The Prosecutor General considers that there is no impediment to extradition.

SU opposes extradition. He argues that there is an impediment to extradition under Section 7 of the Extradition for Criminal Offences Act and that extradition would be in violation of Article 3 of the ECHR.

SU has undergone an investigation of torture injuries under the Istanbul Protocol (torture-injury report).

SU has been deprived of liberty from 5 April 2023 through 19 June 2024.

## **REASONS FOR THE DECISION**

### **The judgments invoked**

1. In support of the requests, the Republic of Türkiye has referred to judgments of the First and Eighth Criminal Courts of Konya, the enforcement court of Konya, the regional courts of Ankara and Konya and the Court of Cassation of the Republic of Türkiye.
2. According to the judgments, SU was convicted of armed criminal threat (committed in October of 2010) and of the offences of intentional bodily harm, deprivation of personal liberty and invasion of privacy, committed in October of 2014. The judgments refer to Articles 53/1, 86/1, 86/3-e, 87/1-d, 106/2-a, 109/2, 109/3-b and 134/1 of the Turkish penal code.
3. The offences appear to have incurred a sentence of over 15 years' imprisonment.

### **SU's statement**

4. In summary, SU has stated the following.
5. He is a Kurd as well as being an active member of the pro-Kurdish Peoples' Democratic Party (HDP). He is not guilty of the offences for which Türkiye is requesting his extradition. Turkish authorities consider him a terrorist, and the extradition requests are a pretext for the Turkish state to penalise him for his political involvement.

6. He has been tortured by police in Türkiye on several occasions and if he is extradited he is certain that he will be tortured again.

#### **Evidence invoked by SU**

7. In addition to documentary evidence, SU has invoked witness testimony by psychologist KS and physician HT, who conducted the torture-injury investigation. They are employed at the Red Cross Treatment Centre for the War Wounded and Tortured.

8. They have given consistent accounts regarding how a torture-injury investigation pursuant to the Istanbul Protocol is conducted. In summary, this information has revealed the following.

9. Investigations under the Istanbul Protocol are an internationally recognised method used to investigate whether a person has been subjected to torture. The method involves examining the consistency between the events described by the subject and the symptoms, behaviours and injuries he or she exhibits. If there are inconsistencies, it is the task of the investigators to indicate this in their report and to assess the possible reasons for such inconsistencies. However, the investigation does not aim at assessing the general credibility of the subject. The investigation produces a psychological and a medical assessment. The quality of the assessments is audited by colleagues, who review and comment on the report (peer review).

10. In addition, KS has stated, in summary, that it is her assessment that SU's specific symptoms are consistent with the events he has described, and that it is unlikely that his symptoms have been caused otherwise than as stated.

11. In summary, HT has added the following.

12. Her investigation consists of, first, reviewing the psychologist's account of the subject's statements, and then, in accordance with the method prescribed by the Istanbul Protocol, documenting physical injuries. She then assesses to what extent the events described by the subject correspond to his or her injuries.

13. HT deems SU's injuries to be in all respects consistent with the events he has described, and in the case of certain injuries – a bite wound to the tongue and burns in the armpit – HT deems it unlikely that they were caused otherwise than as he has stated.

**The requirement of dual criminality under Sections 1, 4 and 10 of the Extradition for Criminal Offences Act**

14. Pursuant to Section 4, first paragraph of the Extradition for Criminal Offences Act, extradition may be granted only if the act for which extradition is requested is equivalent to a crime that is punishable under Swedish law by imprisonment for at least one year.

15. This provision – together with Section 1, which requires that the person sought be suspected of an offence, under prosecution or convicted in the State requesting extradition – expresses the requirement of dual criminality. The provision in Section 10, second paragraph, that extradition may not be granted if the offence is statute-barred by limitation under

Swedish law, also forms part of the requirement of dual criminality. (See "Extradition and Dual Criminality III" NJA 2023 p. 1156 para. 5.)

16. SU has been convicted in Türkiye of armed criminal threat, intentional bodily harm, deprivation of personal liberty and invasion of privacy. SU is staying in Sweden. The requirements of Section 1 of the Extradition for Criminal Offences Act are thus met.

17. Under Swedish law, the offences covered by the extradition requests correspond to the offences of gross assault (Chapter 3, Section 6 of the Swedish Criminal Code), unlawful deprivation of liberty (Chapter 4, Section 2 of the Swedish Criminal Code), unlawful coercion (Chapter 4, Section 4 of the Swedish Criminal Code) and gross unlawful threat (Chapter 4, Section 5 of the Swedish Criminal Code). All offences carry a sentence of more than one year in prison. There is therefore no impediment to extradition under Section 4 of the Extradition for Criminal Offences Act.

18. The statute of limitations has not expired in respect of any offence, and there is therefore no impediment to extradition under Section 10 of the Extradition for Criminal Offences Act.

**Prohibition against extradition under Section 9 of the Extradition for Criminal Offences Act when the verdict appears manifestly incorrect, etc.**

19. The Republic of Türkiye, like Sweden, has acceded to the 1957 European Convention on Extradition and the Second Additional Protocol to the Convention, which regulates, inter alia, the conditions for extradition in the case of judgments in absentia.

20. According to Section 9, third paragraph of the Extradition for Criminal Offences Act, a judgment delivered by a court in Türkiye is therefore to be accepted, unless it is clear in the particular case that the verdict is manifestly incorrect. Furthermore, a judgment in absentia shall be admissible only if the rights of the person concerned to defend him- or herself can nevertheless be regarded as having been satisfactorily ensured, or if the person concerned has an opportunity to seek a retrial which satisfies those rights.

21. The facts in the case show that SU was present at at least some parts of the trials, and that he was represented by counsel.

22. The judgments cited cannot be regarded as manifestly incorrect, nor are they judgments in absentia. There is therefore no impediment to extradition under Section 9.

**Prohibition against extradition under Section 7 of the Extradition for Criminal Offences Act due to risk of persecution**

23. It is prohibited to extradite anyone who, because of his or her ethnic origins, membership in a particular social group, religious or political beliefs, or otherwise due to political circumstances in the State requesting extradition, risks being subjected to persecution threatening his or her life or freedom, or which is serious in some other respect (Section 7 of the Extradition for Criminal Offences Act). The wording of this provision is largely consistent with the definitions of ‘refugee’ in the 1954 Aliens Act and Chapter 4, Section 1 of the current Aliens Act (2005:716). However, Section 7 of the Extradition for Criminal Offences Act does not perfectly correspond to the right to remain in the country according to immigration

law. (See, inter alia, NJA 2017 p. 975, para. 10-14, and "Extradition and Dual Criminality III", para. 20 and references therein.)

24. For Section 7 to constitute an impediment to extradition, there must be grounds for establishing a substantive risk of persecution. In the case of political persecution, the risk must be based on the political opinion of the person concerned or at least on the assumption by the State requesting extradition that he or she holds a particular political opinion. It is therefore not sufficient that the political conditions that prevail in the country are generally difficult and there are instances of persecution of political opponents. The application of Section 7 leaves no room for weighing the requesting State's interest in prosecution or enforcement.

25. SU has referred to information from the Swedish Migration Agency's legal and country-of-origin information system (LIFOS).

26. The country-of-origin information (COI) on Türkiye – 'Situation and impact on specific groups' (version 3.0), dated 8 June 2020, states, inter alia, that Human Rights Watch, in its 2019 Annual Report, notes continued abuses and torture in police custody and prisons. It is emphasised that the situation of Kurds, left-wing activists and suspected supporters of the Gülen movement is particularly difficult.

27. The most recent COI available for Türkiye is from 9 April 2024 and is entitled 'Political developments, rights and freedoms and situation of specific groups' (version 4.0). It states that in 2021 the Turkish prosecution authority filed an application with the Constitutional Court to dissolve the HDP, citing its alleged links to the PKK, and that Turkish authorities continue to carry out raids across the country targeting individuals with suspected links to the PKK.



28. SU is a Kurd and has stated that he is an active member of the pro-Kurdish party HDP. There is no reason to doubt these statements.

29. In addition, SU has stated that the Turkish authorities consider him a terrorist. As proof, he has invoked numerous decisions and judgments of the Turkish courts. According to these decisions and judgments, he has been sentenced, inter alia, to 10 months' imprisonment, in April of 2012, and, apparently, to a sentence of three years' imprisonment, in October of 2018, for promoting a terrorist organisation (PKK). Furthermore, in March of 2020, he was sentenced to more than 11 months' imprisonment for insulting the President. In addition, on 23 December 2021, he was acquitted of a charge of insulting the President, but that judgment also states that the prosecutor has been instructed to open a preliminary investigation into SU's promotion of a terrorist organisation.

30. No evidence gives rise to any doubts regarding the judgments and decisions, and the Prosecutor General has not commented on them. Thus, SU's statement that Türkiye considers him a terrorist must be accepted.

31. The torture-injury report received by the Supreme Court is thorough and has been carried out in accordance with the Istanbul Protocol, which is an internationally recognised methodology. It should therefore be given great weight in assessing whether torture has occurred.

32. The report concludes that SU suffers from psychological and physical symptoms and complaints which in their entirety are consistent with the torture to which he claims to have been subjected. It further states that the symptoms he exhibits are common and to be expected among people exposed to prolonged, repeated and extreme traumatisation. It also

emerges from the witness testimony by HT that certain injuries are unlikely to have causes other than those stated by SU.

33. SU's allegations that he was tortured by the police in Türkiye are thus strongly supported by the torture-injury report.

34. Against this background (see para. 26-33), a risk of such persecution as referred to in Section 7 of the Extradition for Criminal Offences Act must be considered to exist, and there is thus an impediment to extradition under that Section.

### **Article 3 of the ECHR**

35. It follows from Article 3 of the ECHR that a state may not extradite a person to another country if there are substantial grounds for believing that he or she would face a real risk of torture or inhuman or degrading treatment or punishment in that country. It is the individual risk posed to the person requested which is to be assessed. The fact that a State frequently violates human rights is typically not a sufficient basis for considering that extradition to that country is contrary to Article 3. However, the general situation or, for example, severe prison conditions in a country are elements in the assessment of the circumstances of the individual case. (Cf. NJA 2017 p. 677, para. 14, and NJA 2021 p. 1109, para. 72.)

36. Abuse and torture occur in Turkish police detention centres and prisons. The situation of Kurds is particularly difficult. SU's statements that Türkiye considers him a terrorist are to be accepted, and there is strong evidence that he has been subjected to torture by Turkish police. (See para. 26-33.)

37. Against this background, there are substantial grounds for believing that SU runs a real risk of being subjected in Türkiye to treatment contrary to Article 3 of the ECHR.

**Summary assessment**

38. Pursuant to Section 7 of the Extradition for Criminal Offences Act, there is an impediment to the extradition of SU to Türkiye. Extradition would also be in violation of Article 3 of the ECHR.

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Justices of the Supreme Court Agneta Bäcklund, Stefan Johansson (reporting Justice), Stefan Reimer, Jonas Malmberg and Christine Lager participated in the ruling.  
Judge referee: Dennis Andreev