



Extradition of genocide suspect would not breach the European Convention on Human Rights

In today's Chamber judgment in the case **Ahorugeze v. Sweden** (application no. 37075/09), which is not final¹, the European Court of Human Rights held, unanimously, that there would be:

No violation of Article 3 (prohibition of inhuman or degrading treatment or punishment), and
No violation of Article 6 (right to a fair trial) of the European Convention on Human Rights, if the applicant were extradited to Rwanda.

The case concerned the complaints by the applicant, a genocide suspect, that, if extradited from Sweden to Rwanda, he risked ill-treatment and a flagrant denial of justice.

Principal facts

The applicant, Sylvere Ahorugeze, is a Rwandan national of Hutu ethnicity who was born in 1956 and lives in Denmark.

He used to be the head of the Rwandan Civil Aviation Authority. In 2001, he moved to Denmark where he was granted refugee status.

Some time after September 2007, the Rwandan authorities requested his extradition from Denmark on suspicion of involvement in genocide and crimes against humanity. As no evidence was presented in support, however, the Danish authorities did not respond to that request.

In July 2008, the Swedish police were informed by the Rwandan Embassy in Stockholm that Mr Ahorugeze had visited Sweden and that the Rwandan authorities were seeking his arrest. As a result, Sweden arrested him in compliance with an international alert and warrant of arrest.

In August 2008, the Rwandan prosecution service formally requested Mr Ahorugeze's extradition so that he could be prosecuted for genocide, murder, extermination and involvement with a criminal gang. They also presented assurances that he would be treated humanely, in accordance with internationally accepted standards.

A Swedish court authorised Mr Ahorugeze's detention on suspicion of genocide. Following the prosecutor's opinion favouring extradition, the Supreme Court concluded that there was no general legal obstacle to sending Mr Ahorugeze to Rwanda to stand trial on charges of genocide and crimes against humanity. The Supreme Court added that it

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

assumed the Swedish Government would consider further information before it took its final decision whether to extradite.

In July 2009, the Swedish Government decided to extradite Mr Ahorugeze to Rwanda to be tried for genocide and crimes against humanity. It noted that the death penalty and life imprisonment in isolation had been abolished in 2007 and 2008 respectively. The prison conditions were acceptable, and Rwanda did not practice torture or other forms of ill-treatment. The Rwandan judicial system had improved over the last couple of years, including its witness protection programme and the possibility to interview witnesses living abroad.

On 15 July 2009, upon Mr Ahorugeze's request, the Court – applying the rule on interim measures of the Rules of Court - indicated to Sweden that his extradition should be suspended. Following the Court's request, the Swedish Government presented the assurances it had received from the Rwandan Minister of Justice confirming that Mr Ahorugeze would be tried fairly and treated correctly.

The Swedish Supreme Court released Mr Ahorugeze from detention on 27 July 2011.

Complaints, procedure and composition of the Court

Relying on Article 3, Mr Ahorugeze complained that if extradited to Rwanda he would risk being tortured or otherwise ill-treated. He further argued that would not be able to get heart surgery in Rwanda and risked persecution because he was a Hutu. Under Article 6, he alleged that he would not get a fair trial in Rwanda.

The application was lodged with the European Court of Human Rights on 15 July 2009.

Judgment was given by a Chamber of seven, composed as follows:

Dean **Spielmann** (Luxembourg), *PRESIDENT*,
Elisabet **Fura** (Sweden),
Karel **Jungwiert** (the Czech Republic),
Boštjan M. **Zupančič** (Slovenia),
Isabelle **Berro-Lefèvre** (Monaco),
Ganna **Yudkivska** (Ukraine),
Angelika **Nußberger** (Germany), *JUDGES*,

and also Claudia **Westerdiek**, *SECTION REGISTRAR*.

Decision of the Court

Ill-treatment (Article 3)

While it appeared that Mr Ahorugeze had had a heart surgery earlier, there had been no medical certificates suggesting that he would need another operation in the future. In any event, Mr Ahorugeze's condition was not so serious as to raise an issue on medical grounds under Article 3.

As to his claim that he risked persecution because he was a Hutu, there had been no information leading to the conclusion that Hutus generally were persecuted or ill-treated in Rwanda. Likewise, Mr Ahorugeze had not described any personal circumstances because of which he risked persecution as a Hutu.

The conditions in the prison in which he would be detained and, if convicted, would serve his sentence were satisfactory. In particular, the International Criminal Tribunal for

Rwanda (in a case before it), the Netherlands Government (in its observations as a third party in the present case) and the Oslo District Court (in a case allowing the extradition to Rwanda in July 2011 of another genocide suspect) had confirmed that. The Special Court for Sierra Leone too had sent several convicted persons to serve their sentences in the same Rwandan prison which was to host Mr Ahorugeze.

Finally, there was nothing to suggest that he would be ill-treated in Rwanda. As of 2008, people transferred by other States to Rwanda to stand trial could not be sentenced to life imprisonment in isolation.

Consequently, Sweden would not breach the prohibition of ill-treatment under Article 3 of the Convention, if it extradited Mr Ahorugeze to Rwanda.

Fair trial (Article 6)

It was true that in 2008 and 2009 the International Criminal Tribunal for Rwanda (ICTR) and several countries had refused to transfer genocide suspects to Rwanda due to concerns that the suspects would not receive a fair trial. However, since then, the Rwandan laws had been changed and legal practice had improved.

The central question therefore was whether Mr Ahorugeze would be able to call witnesses and have the Rwandan courts examine their testimony respecting the principle of equality of arms between defence and prosecution. Considering in detail the changes in legislation and practice, the Court concluded that the Rwandan courts were expected to act in a manner compatible with the Convention requirements for fair trial.

In addition, Mr Ahorugeze would be able to appoint a lawyer of his choice; he could also benefit from a lawyer paid by the State, and many Rwandan lawyers had accumulated professional experience longer than five years.

Referring to experience gathered by Dutch investigative teams and the Norwegian police during missions to Rwanda, the Court concluded that the Rwandan judiciary could not be considered to lack independence and impartiality.

Further, Mr Ahorugeze had not showed that he would be tried unfairly because he had testified for the defence in genocide trials in the past. Extradited genocide suspects were tried by the Rwandan High Court and Supreme Court, and not by the community-based *gacaca* tribunals set up in 2002 to deal with the enormous amount of cases by bringing genocide participants to trial and promoting national unity.

Finally, the ICTR had decided, for the first time in June 2011, to transfer an indicted genocide suspect – Uwinkindi - for trial in Rwanda. It had found that the issues, on the basis of which it had refused to transfer genocide suspects to Rwanda in 2008, had been resolved to a degree which made it confident that the accused would receive a fair trial in Rwanda in line with international human rights standards.

Consequently, if extradited to stand trial in Rwanda, Mr Ahorugeze would not risk a flagrant denial of justice. There would, therefore, be no violation of Article 6 in that event.

The Court indicated to the Swedish Government not to extradite Mr Ahorugeze until this judgment became final.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.