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Application of urgent preliminary procedure

To be inserted in the submission at the Swedish Supreme Court

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The preliminary ruling proposed concerns respect by Sweden of the European Directive 2012/13/UE of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings under Title V of the third part – area of freedom, security and justice - of the Treaty on the functioning of the European Union.

Given the factual situation wherein is Julian Assange since the month of June 2012, which undoubtedly constitutes a deprivation of liberty, the Supreme Court of Sweden can ask for application of the urgent preliminary ruling procedure under article 23bis on the statute of the Court of Justice of the European Union and article 107 of the Rules of procedure of the Court.

It is established in case-law of the Court of Justice to apply this procedure when a person is being detained and further detention depends on the answer to be given by the Court.

A report of the European Council on the use of the urgent preliminary ruling procedure analyses the circumstances of fact and of law in which the urgent preliminary ruling procedure has been approved and notes that it is applied “where a person is being detained and further detention depends on the answer to be given by the Court” (C-296/08 PPU Santesteban Goicoechea; C-388/08 PPU Leymann and Pustovarov; C-357/09 PPU Kadzoev; C-105/10 PPU Gataev and Gataeva; C-61/11 PPU El Dridi Hassen)i.

It is sufficient for application of the urgent procedure under article 107, as decided by the Court of Justice in its judgment of 30 May 2013, that “the applicant in the main proceedings is currently deprived of liberty, and the resolution of the main proceedings may have considerable influence on the length of that deprivation”ii.

This is consistent with the assumptions considered by the Court in its information note on references from national courts for a preliminary rulingiii and to the invitation of the European Council to apply the urgent preliminary ruling procedure in situations involving deprivation of libertyiv, which was included in Article 267, paragraph 4 of the Treaty on the Functioning of the European Unionv.

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i Report to the European Council on the use of the urgent preliminary ruling procedure by the Court of Justice annexed to its decision of 20 December 2007 (OJ L 24 of 29 January 2008, p. 44), page 7.

ii Case C-168/13 PPU, *Jeremy*, point 31.

iii OJ C 160 28 May 2011, point 37: "... a national court or tribunal might, for example, consider submitting a request for the urgent preliminary ruling procedure to be applied in the following situations: in the case, referred to in the fourth paragraph of Article 267 TFEU, of a person in custody or deprived of his liberty, where the answer to the question raised is decisive as to the assessment of that person's legal situation or, in proceedings concerning parental authority or custody of children, where the identity of the court having jurisdiction under European Union law depends on the answer to the question referred for a preliminary ruling."

iv Council declaration annexed to its decision of 20 December 2007, OJ L 24 of 29 January 2008, p. 44

v Article 267 (ex Article 234 TEC) "The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning: If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay."

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