[UNOFFICIAL TRANSLATION]

To

Stockholm District Court

Regarding case Nr. B 12885-10 Prosecutor ./. Julian Assange

Hereby we, the undersigned legal counsel for Julian Assange, request that the district court hold a detention review hearing in accordance with the following pleadings and grounds.

SUMMARY OF THE PRESENTATION OF THE ASSANGE MATTER

Julian Assange puts forward that the court should rescind the detention based on the following grounds:

Julian Assange denies the accusations and challenges the claim that there is probable cause for the suspicion both on objective and subjective grounds.

The specific reasons for the arrest are also contested.

Julian Assange also argues that the prosecution authority has not observed due care, efficiency and expediency which falls under the authority's responsibility in cases where the suspect is deprived of his liberty and that this situation together with the prosecution's failure to arrange a questioning with Julian Assange in the United Kingdom, which has resulted in unreasonable delay, means that it is disproportionate, and in violation of Julian Assange's fundamental right to liberty of the person, to uphold the detention decision.

Julian Assange presents the following in the development of his position:

BACKGROUND

Julian Assange visited Sweden in August 2010 in order to participate in a seminar organized by the Brotherhood movement. On 20 August 2010, complainant A and complainant S sought advice from police, see appendix 1. The police drew up on its own initiative a report of rape, and of sexual molestation and sexual coercion. On 22 August 2010 the prosecutor Eva Finné informed on 24 August 2010 that the suspicion of the crime of rape was canceled and that the only suspicion that remained to be investigated related to molestation of complainant A. On August 27, 2010, the legal representative for the complainants requested a review of the prosecutor's decision to close the investigation into rape.

Julian Assange appeared voluntarily for questioning on August 30, 2010. At the questioning Julian Assange was notified of the suspicion of molestation of complainant A. On 1 September the prosecutor, Marianne Ny, decided to resume the suspicions of the preliminary investigation that had been canceled.

Julian Assange's then defense counsel, attorney Bjorn Hurtig, contacted the prosecutor on several occasions during the period from September 1 to September 15 on the grounds that Julian Assange had commitments that required him to travel to London. The prosecutor gave no further answer other than that nothing stood in the way for him to travel. After Julian Assange left Sweden on 27 September

2010, his defense counsel contacted the prosecutor once again to inform that Julian Assange could return to Sweden October 11, 2010 or the days around that date for further questioning.

After the prosecutor rejected the proposal of questioning on October 11, 2010, Julian Assange informed the prosecutor through counsel that he was available for questioning at the prosecutor's convenience, but that the questioning would have to take place in London.

Instead of arranging for a questioning, the prosecutor filed a request that Julian Assange be arrested in his absence. Stockholm District Court handed down a decision on 18 November 2010 in the prosecutor's favor on detention. As grounds for the arrest it was stated that there was probable cause for suspicion of unlawful coercion, 13-14 August 2010; three counts of sexual assault on 13-14 August, 18 August, or thereabouts and on 16-17 August; and rape on August 17 2010; and that there was a flight risk.

On appeal, Svea Court confirmed the District Court's decision to arrest on 24 November 2010, but changed the basis for the arrest as referring to the probable cause for suspicion of unlawful coercion, 13-14 August; two counts of sexual molestation on 13-14 August and August 18th or thereabouts; and rape (less serious crime), 17 August 2010 and that there was a flight risk.

On December 2, 2010 the prosecutor issued a European Arrest Warrant ("EAW") request that Julian Assange be arrested and surrendered from the United Kingdom to Sweden. The EAW invoked as part of its supporting material the Court of Appeal decision on 24 November 2010 to arrest of Julian Assange in his absence.

As a result of the EAW, Julian Assange was deprived of his liberty on 7 December 2010. He was released on 16 December 2010 after which he became the subject of electronic surveillance with electronic tagging and daily reporting to the police, and on 31 May 2012and prohibition to leave his home between 22:00 - 08:00.

The EAW was challenged before the British courts and on 31 May 2012 the Supreme Court decided

that Julian Assange would be surrendered in accordance with the detention order. Julian Assange had challenged the warrant on the grounds of the legality of its issuance. The Supreme Court's final decision not to reopen the case was delivered on 14 June 2012.

On June 19, 2012 Julian Assange entered the Ecuadorian Embassy in London. The Ecuadorian government granted Julian Assange political asylum on 16 August 2012 to prevent his extradition to the United States where he risks prosecution for publications by WikiLeaks concerning inter alia the war in Iraq.

In summary, it is submitted *that* Julian Assange has been available for questioning in Sweden during the period from August 20 to 27 September 2010, *that* he offered to return to Sweden on October 11 or the days around that date to attend questioning, *that* he in the time thereafter has been available for questioning in the United Kingdom and *that* during the period from 7 December 2010 to 19 June 2012 he was prevented from traveling to Sweden because of the coercive measures against him as a direct consequence of the issued EAW.

PLEADINGS

Julian Assange now puts forward that the district court should rescind the warrant by process of review.

Julian Assange requests that the court grant an oral detention hearing.

GROUNDS

Julian Assange denies probable cause for the suspicions and contests the specific detention reasons

Julian Assange also puts forth that the investigation is not being conducted with the required care, expediency and urgency and that the prospective gain from maintaining the arrest is not proportionate to the harm that is caused by the decision.

PROBABLE CAUSE

A prerequisite for detention pursuant to Chapter 24, § 1 of the Procedural Code is that there must be

probable cause for a criminal accusation, for which there is a jail sentence of at least one year or more.

It is significant that the evidence requirement refers to whether the circumstances of the case constitute the criminal act, not whether the facts in themselves constitute a criminal act (Gunnel Lindberg, Pre-trial supervision measures, 3rd Ed, p 304). Thus, the facts referenced must meet the criteria of the relevant penal provision and the investigation must determine whether these facts are probable or not given the circumstances of the case in question.

From the weak documentation submitted to the District Court and the Svea Court of Appeal detention proceedings it can be seen that when it comes to accounting of the reasons for decisions to investigate purely standard formulae were presented - it is next to impossible for Julian Assange to subsequently know what specific documents the courts have used to form the basis of their decisions.
Julian Assange denies the designated criminal acts and contests the claim that there is probable cause for the suspicions and the specific reasons for detention.

It is important to note that initially the complainants did not go to the police to report any crime. The reason was to learn whether there were any legal means to compel Julian Assange to take a blood test to ensure he had no venereal diseases. The police officer handling the matter was Irmeli Krans, an acquaintance of complainant A.

The circumstances that are alleged to constitute the criminal acts therefore appear to arise from the assessment made by the investigators. It is difficult to discern from the interrogations included in the detention bundle from 5 November 2010 what these facts might be. It is particularly difficult to see the basis for the criminal allegation in relation to the suspicion of rape given that there was consent.

To summarize, there is a significant lack of clarity regarding the facts relied upon as forming the basis for the arrest, and whether these do in fact constitute criminal acts. In any case, it is clear that there is no probable cause for criminal suspicions on either objective or subjective grounds.

STUDY MATERIAL

Julian Assange had cognizance of the existence of numerous contacts between A and S both before and after the police reports. He has also, through his defense counsel, been made aware of the contents of a number of SMS messages exchanged between, inter alia, A and S. It is Julian Assange's firm belief that these SMS messages strongly support that there is no basis for the allegations made against him.

Chapter 24, 9a § provides that the person who has been remanded or detained has the right to know the circumstances that form the basis of the decision on detention or remand. The rules on secrecy and transparency in Chapter 10, 3 §, 2nd part provide that this right to access cannot be limited by reason of a decision to keep information under seal (prop. 2013/14:157 s. 26).

The decision is an implementation of article 7 of the Directive adopted by the European Parliament and Council 2012/13/EU on 22 May 2012.

The Directive's article 7 provides that the person who has been arrested or placed in detention has a right to access the documents that are relevant to the specific case and that are consistent with, in conformity with national law, the ability to effectively challenge the legality of the detention or arrest decision.

The right to access material includes documents that are of material importance to the decision about detention or arrest, as well as material that is speaks in favor of the accused, and which the prosecutor is obliged to disclose in conformity with the duty of objectivity (prop. 2013/2014:157 s. 23 f.).

The prosecutor's duty of objectivity during the preliminary investigation is regulated by Chapter 23, § 4 of the Procedural Code, which establishes that the prosecutor must observe the duty of objectivity throughout the preliminary investigation. The duty of objectivity means that both that evidence which speaks in favor of the suspect shall be secured and that such evidence shall be disclosed (see, eg JO 2007/08 p 87 and SOU 2011:45 p. 95 f.)

The underlying purpose of the right to access is to grant the suspect access to material that is essential to effectively challenge a decision about deprivation of liberty (prop. 2013/14:157 s. 21).

A difference between Article 7 in the Directive and Chapter 24, 9a § of the Procedural Code is that the Directive speaks of "documents", whereas Chapter 24, 9 a § of the Procedural Code talks about "circumstances". No distinction is drawn and it is unclear whether "circumstances" are intended to mean the documents of the legal proceedings (prop. 2013/14:157 s. 23). Paragraph 5 of the Directive's Preamble shows that with documents is meant, where appropriate, photographs, audio and video recordings.

On the basis of his right to access, Julian Assange is making an application to the prosecutor to assemble with ample time before the detention hearing, the interrogation bundle and other documentation that form the grounds of the detention and which were not included in the earlier detention bundle of 5 November 2010. That will include previously excluded material as well as material which has been gathered after the aforementioned detention bundle was assembled.

Further an application is made that the prosecutor include in the compilation the transcript of A's and S's SMS telephone messages. From Julian Assange's perspective these messages provide strong support for his position that there are no grounds for the arrest and they are therefore of great significance for his ability to effectively challenge the detention decision.

Finally it is petitioned that, on the basis of Chapter 23, 4 § and Chapter 24, 9 a § of the Procedural Code that the prosecutor make any other material which speaks in favour of Julian Assange with ample time before the hearing.

EXPEDIENCY

Chapter 24, § 18, 3 of the Procedural Code provides that the court has the specific task of ensuring that the investigation is conducted as expeditiously as possible. The preliminary work of the decision

emphasizes the importance of not prolonging the detention longer than is absolutely necessary and, as a consequence, it is natural that the court puts higher demands on the investigation conducted expeditiously in cases where the decision about whether to indict is delayed again and again (prop. 1986/87: 112 P. 54).

The requirement of expediency also implies a justified claim that the relevant authorities and bodies shall act with reasonable efficiency so the investigation can move forward during the period of detention (see NJA 2011 p 518, p 20). Lack of resources or other shortcomings affecting the relevant authorities or bodies shall not affect on the individual in the form of having to endure longer detention (cf. also RH 1987:73).

In the present case, since September 2010, the most immediate step for the investigation to take is a hearing with Julian Assange . As mentioned above, Julian Assange has been available to conduct such an interrogation first in Sweden, between 20 August – 27 September 2010 and on 11 October or the days around that date, and thereafter in the United Kingdom. For reasons that remain unclear to Julian Assange, the prosecution has not wanted to use these possibilities to question him. Under these circumstances, there are strong reasons for calling into question the legality of the original arrest warrant (see NJA 2007 p 337).

The prosecutor has made it clear that there will be no questioning of Julian Assange in the United Kingdom. The reason given is that the interrogation of Julian Assange may lead to further investigation measures, which in turn may create a need for new hearings with him, and that Julian Assange must be personally present if the case comes to trial and serve a sentence if he is convicted.

It is clear, also from the prosecutor's own position presented above, that a questioning of Julian Assange would bring the investigation forward so that it would form the basis for new decisions regarding how the investigation should proceed. Such decisions may relate to additional questioning of the complainants or witnesses or the decision to discontinue parts of the investigation, or a decision to indict. Clearly it must be in both Julian Assange's and the complainants' interest that the investigation is progressed in this way.

The ability to hold interrogations with Julian Assange in the United Kingdom has also been the only possibility to bring the investigation forward during the time that Julian Assange has been subjected to coercive measures, that is to say from 7 December 2010 until 19 June 2012. The fact that the length was the result of Julian Assange utilizing the legal remedies available to him to challenge the EAW does not carry any implications in this context (see NJA 2011 p 518, p 29).

In conclusion, the prosecution did not utilize the possibilities available to carry out the questioning with Julian Assange in the United Kingdom, despite several approaches from Julian Assange, and that the prosecutor therefore has not progressed the investigation forward in a reasonably effective way, given the factual circumstances.

PROPORTIONALITY PRINCIPLE

Chapter 24, § 1, 3 of the Procedural Code provides that detention is permissible only if the desired objectives to be achieved by that measure outweigh the intrusion or other coercive measures on the suspect or any other conflicting interest. The provision lays out the principles of necessity and proportionality that must be applied in custody decisions.

These principles imply that each individual case must be examined in relation to whether there is a substantial need for detention and whether the desired objective can be achieved by a less intrusive measure, and if the detention in question, having in mind its nature, severity, scope and duration, is proportionate to the desired objective to be achieved (prop. 1988/89: 12 p 26 ff).

Under the current conditions, it is obvious that the warrant is not a necessary prerequisite to carry out an interrogation with Julian Assange. Given that Julian Assange throughout the investigation has declared his readiness to cooperate in order for a questioning to be arranged, it is questionable whether the original arrest warrant was necessary in order to achieve this objective in the first place. In this regard, the obligation falls on the investigating authority to examine the possibility of arranging to question through other means than being physically present in Sweden (NJA 2007 p 337).

The warrant of arrest has, directly and indirectly, led to Julian Assange being subject to coercive measures against his person for a very long period of time. Firstly through deprivation of liberty from 7 to 16 December 2010 and thereafter placed under surveillance with an obligation to report himself to police and limited freedom of movement from 16 December 2010 - 19 June 2012, ie a total time of about one year and six months.

Since June 19, 2012 has Julian Assange has exercised his right to political asylum in Ecuador, and remained in the Ecuadorian Embassy in London. The situation is comparable to house arrest given that Julian Assange is unable to leave the embassy.

The investigation's interest to question Julian Assange in Sweden, which is justified by the reasons that the questioning may lead to further investigative measures which will create a need for supplementary interviews with Julian Assange, cannot be considered to outweigh the extremely negative and detrimental impact resulting from the detention decision, especially in light of the fact that there are no practical barriers to questioning Julian Assange several times in London.

In this consideration the court must also factor in the fact that the prosecutor chose not to question Julian Assange during the time he remained in Sweden after the investigation began, and that Julian Assange offered to return to Sweden at a specific time to participate in an interrogation, which was rejected by the prosecutor. In the time since then Julian Assange has also requested the prosecutor question him in London on several occasions, at a time when he himself has been prevented from traveling to Sweden because of the coercive measures imposed on him as a result of the EAW, which was issued with the underlying detention decision.

Had the prosecutor decided to question Julian Assange in London, there are reasons to believe, taking into consideration the length of time that has passed, that the preliminary investigation would have been completed by now and the prosecutor would have been able to make a decision in relation to whether or not to make an indictment. Thus, there is considerable uncertainty about the way the investigation has been conducted from the perspective of effectiveness and Julian Assange should not

have to bear the burden of these ambiguities (NJA 2011 p 518, p 21).

In the cases of Dudla v Poland and McKay v United Kingdom, the European Court of Human Rights established that there is a presumption in favor of release, unless there is a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty. The court must consider, taking into consideration the presumption of innocence, those facts that speak for and against this public interest and also take a position regarding whether the responsible authorities have shown due care in their handling of the matter (p-110-111 and p. 41-43 respectively).

In the present case it is clear that the interest to question Julian Assange cannot be understood to justify a deprivation of liberty when Julian Assange has made himself available for questioning in Sweden and, during the time that was prevented from leaving during the time when was prevented from leaving the United Kingdom, made himself available for questioning in the United Kingdom. The prosecution authority's failure to utilize the possibility of holding a questioning in the United Kingdom also indicates a lack of consideration for both Julian Assange's and the complainants' interest in that the matter be handled in a way that progresses the investigation.

In summary, a decision to uphold the detention would therefore be contrary to the principles of necessity and proportionality as well as be in conflict with article 5 of the European Convention of Human Rights.

EXECUTION

A detention decision is executed by the suspect being taken into custody (Chapter 24, 22 §, 1st part of the Procedural Code). That also applied to decisions about detention in absence (see G Lindberg, Criminal Procedure coercive measures, 3rd edition, p. 317). The proportionality principle shall be applied even at the time of the execution of a detention decision. (cf Lindberg, Criminal Procedure coercive measures, 3rd edition, p. 32).

As a means to execute the decision to detain Julian Assange in his absence, the prosecutor issued an EAW on 2 December 2010, annex x. From what can be seen in the EAW, the relevant authority is requested to arrest and surrender Julian Assange and the executable decision cited is the Svea Court of Appeal's decision delivered on 24 November 2012 in case number Ö 9363-10, that is to say the decision to detain Julian Assange in his absence. The EAW was issued backed by the decree (2013:1178) about surrender to Sweden according to the European Arrest Warrant. 5 § provides that the proportionality principle shall be applied at the time of issuing the EAW.

The rules relating to the European Arrest Warrant implement the Council's Framework Decision from 13 June 2001 about the European arrest warrant and the surrender procedures between Member States (2002/584/RIF). The European Arrest Warrant means that decisions to arrest can be executed on the basis of the principle of mutual recognition of member states' judicial decisions. The principle means that member states recognize and execute each others' legal decisions, without trying the merits of the decision as such (cf. Petter Asp, International Criminal Law, p. 154 ff.). Very limited possibilities exist to refuse the execution of the EAW, so as to ensure a more effective and fast surrender, for example in order to carry out legal proceedings.

The execution of the detention decision has been in effect since 7 December 2010, when Julian Assange was deprived of his liberty as a result of the issued EAW. The British courts' consideration of the EAW continued until 31 May 2012.

The period of time it took the British courts to examine the legality of the EAW must also be considered to be in conflict with the purpose of the European Arrest Warrant. Having this in mind, it is questionable whether it was reasonable to have used a simplified procedure such as the EAW, with the corresponding limitations for the suspect to challenge the arrest decision, when the intended objective of expediency in the matter could not be achieved. The consequence of the drawn out proceedings in relation to the EAW is that Julian Assange for a long time has not had the possibility to challenge the detention decision on material grounds.

During the time that the matter has been ongoing, Julian Assange has been subjected to different

coercive measures such as deprivation of liberty, electronic surveillance, an obligation to report himself to police and house arrest during certain hours of the day. The ongoing execution has therefore carried with it considerable interference with Julian Assange's fundamental rights and brought considerable harm to him.

For example, Julian Assange's father passed away in Australia on 1 April 2012 and his grandfather passed away in Australia on 2 October 2012, without Julian Assange having had the possibility to visit them before they passed away or attend their funerals. Since 7 December 2010, British police has seized Julian Assange's passport, which is his only identity document and therefore made it impossible for him to conduct normal financial affairs which relate to banking, work, and overall subsistence. The issuance of the EAW has thus seriously interfered with his private life, his social life, and his ability to conduct his financial affairs.

Since the 19th of June 2012, Julian Assange has remained in the Ecuadorian embassy in London in the context of the granting of political asylum in Ecuador with the purpose of preventing his prosecution in the United States. Assange has been prevented from leaving the premises of the embassy since 19 June 2010. The surveillance of the embassy is based on the decision that Julian Assange shall be surrendered to Sweden in accordance with the issuance of the EAW.

Given that the detention decision involves the interference with Julian Assange's fundamental right to liberty, the decision can only be upheld only if the interference is prescribed by law and is necessary in a democratic society to achieve the desired objectives and that the interference does not go beyond the aim (Chapter 8, 8 §, 12 § and 22 §, 2 part., 4 p. of *Regeringsformen*). The rules regulating the deprivation of liberty through detention are contained in Chapter 24, 1 § of the Procedural Code, and it contains the legal justification for detention, namely flight risk, collusion and risk of further criminality.

In Julian Assange's case the court has justified the decision of detention on the grounds that there is a flight risk or that he would avoid prosecution or serving a sentence through another means. The objective of securing legal proceedings is set out in Chapter 24, 1 §, 1 part. 1 p. of the Procedural

Code, but in the present case must be read in the context of existing circumstances.

Julian Assange's status as a political refugee implies that the EAW, and therefore the detention decision, cannot be executed as long as Julian Assange remains under Ecuador's protection. As long as Julian Assange remains in the embassy, the British authorities have no possibility of surrendering him to Sweden. The detention decision cannot therefore be executed and therefore does not serve the purpose of securing legal proceedings against Julian Assange in Sweden (compare RH 1981:13).

At the same time, the drawn out execution means that Julian Assange, in order to avail himself of the political asylum that has been granted to him, has been forced to live under extremely difficult conditions since 19 June 2012. Julian Assange has a room of about 10m2 and has no possibility of going outside. He has limited social contact in the form of visits at the embassy and phone calls.

Under these conditions the drawn-out execution of the arrest decision, which Julian Assange should not bear the burden of, in combination with the conditions under which he is living, should be considered interference that are so serious that it cannot be reasonable to uphold the detention decision, especially when taking into consideration what has previously been said about the prosecutor's failure to seek other possibilities to question Julian Assange and keeping in mind that the desired objective of the detention decision cannot be achieved by the existing conditions.

In summary, the execution has already been drawn out in time in a manner that is disproportionate for reasons that are not assignable to Julian Assange and the aim of the execution, to question Julian Assange, can be satisfied by way of significantly less intrusive measures, and it cannot be expected that the execution should be upheld as long as Julian Assange avails himself of the political asylum that Ecuador's government has granted to him.

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