

# UK judge defers judgement on extradition of WikiLeaks founder Assange

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On Wednesday, at the conclusion of a two day hearing, UK High Court judges Lord Justice Thomas and Mr. Justice Ouseley deferred judgment on whether WikiLeaks editor-in-chief Julian Assange should be extradited to Sweden. A final judgment is not expected to be made for at least three weeks.

Assange was at the High Court at London's Royal Courts of Justice to appeal against his extradition under a European Arrest Warrant (EAW) to Sweden. He faces trumped-up allegations of sexual assault and rape.

The two-day hearing followed the February 24 ruling by District Judge Howard Riddle at Belmarsh Magistrates' Court that Assange can be extradited. Riddle ruled that extradition would not breach Assange's human rights. He also concluded that would get a fair trial if he was ever charged in Sweden.

At the hearing Assange's representative Mark Summer argued that the EAW was not valid, as the document states that Assange is only suspected "with probable cause" in Sweden. Summers pointed out he has not yet been charged, so is not "accused", making the arrest warrant not valid.

Summers argued that regarding Sweden's issuing of the EAW, "There was from the outset of this case an easier way to proceed. A more proportionate way."

He explained that existing legislation allows judicial authorities alternative mechanisms for contacting a person in another country, without the issuing of an EAW. In a later statement to the court on the refusal of the Swedish authorities to use established procedures within the existing Mutual Legal Assistance (MLA) legislation to contract Assange, he said that MLA was used precisely in order "to enable these type of inquiries in another state".

In their submission to court, Assange's lawyers stated that an EAW can only be issued by an authorised judicial

authority. The authority must be independent of both the executive and the parties involved. Assange's defence maintain that Swedish Prosecutor Marianne Ny did not have the judicial authority to issue an EAW.

In reply Lord Justice Thomas said that if this argument was correct, "it drives a substantial wedge into the application of the European arrest warrant".

In his February ruling, Judge Riddle ruled that Ny did have the authority to issue an EAW and that the EAW was valid. He also judged that the accusations of sexual assault and rape, which allege the use of force, would be recognised in English law.

Representing the Swedish authorities and the UK Crown Prosecution Service, Clare Montgomery attempted to undermine a central contention that Assange's defence team had made the previous day. Assange's representatives had argued that EAW was "misleading in the extreme" and failed to provide a "fair, accurate and proper" description of the alleged sexual misconduct. They contended that Assange was a victim of a "mismatch" between English and Swedish law on what constituted a sex crime.

The extremely arbitrary nature of the entire EAW system was revealed in Montgomery's contention that "Extradition offence means the conduct complained of. It has nothing to do with the evidence."

She added that there is "nothing to suggest the prosecutor has intent to bring the case as described in some of the witness statements rather than as put in charges."

Regarding the fact that Assange is not described in the EAW as an accused person, Montgomery baldly stated, "Assange is accused in a popular sense if not in a technical sense".

The prosecution barrister also claimed that it did not matter that Assange was wanted for questioning, rather than facing charges, and said the wording of the warrant

was deliberately vague in this respect.

Yet in February, Montgomery had stated that the case was “extraditable” because the EAW issued by Ny “clearly denotes a sufficient intention to prosecute”.

That argument was itself a volte-face on earlier assertions that Assange merely faced questioning in Sweden. Aware that Assange’s legal argument that questioning did not warrant extradition is correct, the prosecution at that time claimed that the Swedish authorities intended to indict Assange on a charge of rape. They put forward no further evidence to justify this assertion—either in the form of a statement by the Swedish authorities, or by producing any new substantive evidence that would make such a prosecution likely.

In Wednesday’s hearing, Montgomery argued that Assange was being accused of “non-consensual, coerced sex” by the Swedish authorities and sought to portray the witness statements of the two women involved in that light. In contradiction to the statements made by one of the two women known as AA, Montgomery asserted that she had been the victim of “coercive violent sex”.

In relation to the woman known as SR, Montgomery claimed, “She may later have acquiesced,” but added, “That didn’t make the initial penetration anything other than an act of rape.”

Replying to Montgomery, Justice Thomas signalled some agreement with her statement that an extradition offence “means the conduct complained of. It has nothing to do with the evidence.” He told the court, “We are not concerned with whether this is a good case or a bad case, but whether what is charged amounts to a crime.”

Justice Thomas did question why the Swedish authorities had refused to allow Assange to be interviewed without extradition, in the spirit of “EU co-operation”. He asked, “Why are we precluded from acting with sense in this European Union when the commission talks about [judicial] co-operation?”

In a statement to the court Ben Emmerson, Assange’s barrister, said Montgomery’s earlier argument in isolating a moment of lack of consent in an encounter that was consenting both before and after “is crazy”.

Refuting the points made by Montgomery, Emmerson argued that one of the women had later told another person that she felt she had been “railroaded” by the Swedish police and that she had only wanted Assange to get a blood test. She said she did not want to press charges, said Emmerson.

Referring to the woman known as AA, Emmerson stated that she “did not even say she had been exposed to

abuse; she didn’t even want to go to the police,”

Addressing the wording of the EAW, Emmerson told the court, “The clearest possible facts have been concealed through the terminology of the warrant. That is wrong.”

Emmerson told the court that the women had consented in their sexual encounters with Assange and under English law he would not have been charged. “What (Swedish prosecutors) must prove beyond reasonable doubt is that if these circumstances, as alleged, had happened in London, would they have constituted offences?” he said.

Summers, for the defence, stated that that a district court in Sweden “have confirmed reasonable suspicion”, but that the EAW does “not spell out a concrete charge.” On this point he contended, “The use of the word suspect in the EAW takes us no further at all”.

He concluded, “The prosecutor has never sought to explain why she has not engaged all other mechanisms [i.e. other than extradition] to progress this investigation... The reason there is a stand-off is entirely of Sweden’s making. What a waste of time.”

In February, Assange described the High Court’s proceedings as a “rubber stamping process” and the “result of a European arrest warrant system run amok.”

The EAW system was agreed in principle by European Union member states in December 2001 and introduced in August 2003. As part of the so-called “war on terror”, EAWs are used to extradite people to any country of the European Union without due consideration of the facts of the case against them. Three people are extradited every day from the UK alone on EAWs.



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