WikiLeaks founder Julian Assange awaits court decision on extradition

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The UK Supreme Court concluded a two-day hearing Thursday of an appeal by WikiLeaks founder Julian Assange, challenging his extradition to Sweden on unsubstantiated and contested allegations of sexual assault made in August 2010.

The appeal was heard by seven justices, who after legal submissions from the defence and prosecution, said they would reserve judgement for several weeks.

Assange was arrested in London on December 7, 2010, under a European Arrest Warrant (EAW). He has now spent 424 days under house arrest.

At every stage in the attempt to extradite Assange, he has been denied his basic democratic rights. He has never been charged with any crime in Sweden or any other country. Even on his arrest warrant, he is not designated as an "accused" person.

The Supreme Court is the highest court in the UK. Following the decision by the High Court in December 5 to allow his extradition, Assange's appeal is the last legal avenue open to prevent his removal under the EAW system.

Assange was only reluctantly allowed by the High Court in December to petition the Supreme Court and only on one specific issue deemed to be of "general public importance". This was "Whether a European Arrest Warrant ('EAW') issued by a public prosecutor is a valid Part 1 Warrant issued by a 'judicial authority' within the meaning of sections 2(2) & 66 of the Extradition Act 2003?"

Assange's legal team have noted that—despite the fact that a previous case established that the Swedish National Police Board was the country's sole issuing authority for EAWs—it was Swedish prosecutor Marianne Ny who issued the EAW for Assange's arrest.

Assange's legal team produced a document outlining their case against extradition. It states "that the Swedish public prosecutor is not a 'judicial authority' within the meaning of sections 2(2) and 66 of the Extradition Act 2003 ('the 2003 Act')."

Accordingly, she "cannot issue a valid EAW, because she lacks the impartiality and the independence from both the executive and the parties which constitute essential features of the exercise of judicial authority, under domestic and European law.... In short, the prosecutor, as the party with conduct of the criminal investigation into the allegations against the Appellant, cannot act as a judge in relation to the same action."

Outlining the provocative and partisan actions pursued by Ny, the summary states, "As the facts of this case demonstrate, the prosecutor is in an adversarial relationship with the Appellant. For example, she has applied to the Swedish court for an order for his detention; and has made submissions opposing his appeal against that order. Contrary to the finding of the High Court, she cannot in these circumstances validly exercise 'judicial authority' over his case."

On Wednesday, Assange's lawyer, Dinah Rose, an expert in civil liberties and European Union law, argued before the court that the inclusion of public prosecutors in the issuing of extradition warrants was "contrary to a basic, fundamental principle of law."

Rose cited historical legal texts, including the Roman Codex Iustinianus, which states, "We decree by general law that no one ought to be his own judge or to administer justice in his own cause. For it is very unjust to give somebody permission to pass judgement in his own cause."

Giving a detailed overview of the history of the extradition system, Rose stated that the evolution of extradition law gave a "very strong indication" that

"decisions with serious implications for personal liberties should only be taken by independent judicial authorities."

Describing the wording of the final EAW framework agreement, used throughout Europe, she explained that word judicial is used "over and over again". She added, "It is simply not possible to conclude" that the issuing judicial authority could include a public prosecutor. An executing judicial authority could only be a judge.

Some European states have approached the question of what is and is not a judicial authority with "extraordinary vagueness and casualness," she said.

On Thursday, Clare Montgomery, representing the Swedish authorities, opposed Rose's argument—claiming that the Swedish prosecutor was not adjudicating between two parties, so there was no issue of partiality.

This claim does not withstand scrutiny.

On August 21, 2010, based on a review of the allegations, an initial arrest warrant against Assange was withdrawn by Stockholm's chief prosecutor, Eva Finne, who stated, "I don't think there is reason to suspect that he has committed rape."

Within 10 days of the case being thrown out, it was revived, following the intervention of Claes Borgstrom, a Social Democratic Party figure and lawyer for the two women, and a friend of one of them, without any evidentiary foundation.

After questioning by police, Assange was never charged with any crime during his time in Sweden. At every stage, he cooperated with the police investigation into the allegations. He even remained in Sweden beyond his scheduled time there. It was only after Assange had received authorisation to leave Sweden and had left the country that Ny issued a new domestic arrest warrant against him.

On September 1, Ny stated that reversing another prosecutor's decision was "not an ordinary [procedure], but not so out of the ordinary either."

This is despite the fact that Ny is not normally actively involved for the prosecution in individual cases. It was only on the basis of her position as a senior prosecutor, an anomaly of Swedish law, that Borgstrom was able to appeal to her to reopen the case.

Following Ny's actions, and still facing no charges, Assange offered to make himself available to be questioned by telephone, video link, etc.—a request that was consistently declined by the Swedish authorities.

At the Belmarsh Magistrates Court in February 2011, the decision to extradite Assange was upheld, despite the fact that the alleged offences are not extraditable ones in the UK.

Such has been the extreme narrowing of all his legal options that the Supreme Court hearing was reduced to a debate over whether the EAW warrant should have been issued by Ny, without questioning the issuing of the warrant in the first place.

The undemocratic and arbitrary European Arrest Warrant system was imposed as part of the "war on terror". In her submission to the court, Montgomery acknowledged this, commenting that the EAW agreement was "done at great speed, coming as it did on the heels of 9/11."

Grave precedents are being set by the persecution of Assange.

The EAW framework was incorporated into British law under the Extradition Act 2003. But even this act provides an unequivocal requirement that arrest and extradition to EU countries can only be carried out with the purpose of being prosecuted, where the person is accused.

Were the Supreme Court to reject Assange's appeal, he could be extradited to Sweden within days. From there he could face possible extradition and prosecution on terrorism charges in the United States, with which Sweden has a "temporary surrender" agreement.