UK High Court sides with US against Assange

Thomas Scripps
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The UK's High Court has allowed the United States to appeal on two additional grounds the refusal of Julian Assange's extradition by a lower court.

Assange, the founder of WikiLeaks still held in Belmarsh maximum security prison, is threatened with extradition on charges under the Espionage Act with a potential life sentence for revealing state war crimes, torture, surveillance, corruption and coup plots.

On January 4, District Judge Vanessa Baraitser blocked extradition, ruling that it would be oppressive by virtue of his mental health and put him at substantial risk of suicide.

Lawyers for the US government sought to appeal the decision on the five grounds:

• That Baraitser made errors of law in her application of the test under section 91 of the 2003 Extradition Act, which bars extradition if the person's mental or physical condition would render it unjust or oppressive.

• That she ought to have notified the US ahead of time, to give the government the opportunity to provide assurances to the court that Assange's health would be looked after.

• That the judge should not have accepted or at least given less weight to the evidence of the defence's principal psychiatric expert, Professor Kopelman.

• That Baraitser erred in her overall assessment of the evidence on suicide risk.

• That the US has since provided the UK with a package of assurances about the conditions in which Assange would be held.

The US was initially granted leave to appeal on grounds one, two and five, but denied three and four. At a preliminary hearing yesterday in front of Lord Justice Holroyde and Mrs Justice Farbey, that decision was overturned and grounds three and four were granted as well.

Their decision confirms that the January 4 ruling against extradition was only a tactical pause in an ongoing pseudo-legal manhunt, which is again proceeding apace.

Baraitser's original decision accepted every one of the prosecution's anti-democratic, factually unsustainable arguments except on the single point of Assange's mental health, leaving his fate hanging by a thread. Now the US is being given the opportunity to bulldoze this last remaining obstacle.

As Assange's legal team argue in their Notice of Objection, none of the points made in the appeal by the US stand up to scrutiny.

On ground one, the US lawyers "identified no errors of law in the approach taken by the District Judge" who applied the relevant "Turner test" in a manner consistent with the recent case of Lauri Love.

On ground two, the court was under no obligation to prompt the US to provide assurances.

On ground five, the new US "assurances" are nothing of the sort—they are conditional and have been given and broken in previous cases. Moreover, they have been introduced at such a late stage that they cannot be properly tested and contradict "the long-held and vitally important principle" that "parties to an extradition hearing should deploy all their evidence and raise all relevant issues at a single extradition hearing."

Grounds three and four, Edward Fitzgerald QC maintained yesterday, representing Assange, are simply "unarguable."

Claire Dobbin, representing the US, claimed that since defence expert medical witness Professor Kopelman had failed to record in a preliminary report that Assange was in a relationship with Stella Moris and had conceived two children with her—of direct relevance to the question of his mental health—he was guilty of misleading the court and his evidence ought to have been ruled inadmissible or given far less weight.

But Baraitser did not fail to carry out, in the words of the prosecution's appeal, an "exacting analysis as to why Professor Kopelman" acted as he did. In fact, Fitzgerald explained, she "was fully aware of the criticism" and had "asked herself the right question" as to whether or not, in the context of his broader conduct, this called into question his impartiality.

In her January 4 ruling, Baraitser stated that she "did not accept that Professor Kopelman failed in his duty to the court when he did not disclose Ms. Morris's relationship with Mr. Assange." She described Kopelman's omission as "an understandable human response to Mrs Moris's predicament," which had not led to her being misled.

One does not need to accept that Baraitser came to this decision out of concern for legal principle to point out the bankruptcy of the US's arguments. As Fitzgerald stated at yesterday's hearing, "It is unarguable that there is a principle that any lapse, however understandable… renders the whole of an expert's evidence inadmissible… You have to take it in context and look at the overarching duty" of impartiality.

In her arguments yesterday, Dobbin characteristically asked of Kopelman's "human response," "what does that even mean?" Fitzgerald later powerfully set out the extraordinary oppressive circumstances in which Kopelman made his decision: "There had been a surveillance organisation which was taking DNA from the [Assange's] baby's nappy, which was saying special attention should be placed on Stella Morris, which was examining measures to either kidnap or poison him [Assange]."

Fitzgerald was referring to UC Global, the company which provided security for the Ecuadorian embassy while Assange was confined there and has since been accused by two of its former employees of having been employed by the CIA.

His comment broke through the veil which separates the courtroom proceedings, in which Assange's case is assumed to be a fairly argued matter of law, and the reality in which the US is waging a dirty campaign for the WikiLeaks founder's head. While Kopelman is dragged over the coals for trying to protect Assange's family from America's professional thieves and assassins, the US can proceed with a case based in large part on the admitted lies of a convicted fraudster and FBI asset!

On ground four, Fitzgerald cited at length Baraitser's "clear, comprehensive and, we would say, unassailable" reasoning in coming to her conclusion on Assange's substantial risk of suicide. The US lawyers' argument, he concluded, amounted to the barefaced demand that the appellate court "re-evaluate the whole thing and reach a different conclusion from the person who heard all the evidence."

After an hour's adjournment, the high court judges accepted the US lawyers' arguments, acknowledging that "in general this court rightly takes a cautious approach when considering findings of fact… made by the judge below," but claimed that Kopelman's actions made this case "unusual". The final appeal hearing was scheduled for October 27-28.

Moris spoke to journalists outside the court. "What has not been discussed today is why I feared for my safety and the safety of our children and Julian's life. The constant threats and intimidation that we have endured for years, which has been terrorising us and has been terrorising Julian for over ten years.

"Threats against me, threats against our children, death threats against Julian's eldest son Daniel. Threats on Julian's life, threats of a 175-year prison sentence. And the actual ongoing imprisonment of a journalist for doing his job. These are sustained threats to his life for the past ten years. These are not just items of law. This is our lives. We have the right to exist. We have the right to live, and we have a right for this nightmare to come to an end once and for all."

Yesterday's decision is a warning. The official Don't Extradite Assange (DEA) campaign and its carefully targeted and promoted supporters such as former Labour Party leader Jeremy Corbyn have encouraged appeals to the good sense of the Biden administration or the British judiciary. At a meeting in London in February 2020, Tariq Ali told the crowd, "Hopefully as the case moves upwards to superior courts, we will find some judges who are prepared just to be decent."

This is criminal complacency. Assange's fate must not be left in the hands of the warmongering Biden or the venal British legal system. His freedom depends on the political mobilisation of the international working class, now entering into struggle all over the world, in defence of democratic rights.