

Sweden's Assange Problem: The District Court Ruling. "Probable Cause for Suspicion Against JA For Rape"

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A schizophrenic aspect of the entire Assange affair from the Swedish perspective is the inability of the legal establishment to let go. Despite the contrarian wishes of his alleged victims; despite dissent within the Swedish legal establishment that Assange be hauled over the coals; despite the evidence, the higher authorities insist that he can be detained on suspicion of rape by prosecutors.

The notorious weaknesses of the European Arrest Warrant have been exposed as an affront to natural justice processes. For one, it does not require a formal charging process. Suspicion is the only genuine ingredient that matters, making authorities lazy in filing formal charges.

Assange's lawyers have been pressing Swedish prosecutors to let go of the bit, piggy backing on momentum gathered from the opinions of the United Nations Working Group on Arbitrary Detention handed down in February.

The WGAD found in favour of Assange, arguing in what some considered a novel way that his continued stay at the Ecuadorean embassy could be deemed a detention. "Mr. Assange's stay at the Embassy of the Republic of Ecuador in London to this date should be considered as a prolongation of the already continued deprivation of liberty." [1]

The WGAD further insisted that the Swedish and UK governments "assess the situation of Mr Assange, to ensure his safety and physical integrity, to facilitate the exercise of his right to freedom of movement in an expedient manner, and to ensure the full enjoyment of his rights guaranteed by the international norms on detention."

On May 9, Assange's legal team submitted a request for a new hearing for their client, claiming that the case should be dropped. The Stockholm District Court on Wednesday threw the book back at them, finding that probable grounds had been made out. "The district court finds that there is still probable cause for the suspicion against JA (Julian Assange) for rape, less serious incident, and that there is still a risk that he will depart or in some other way evade prosecution or penalty."

The District Court would none of the opinions fronted by the UN Working Group. Being mere laypersons disqualified them from coming to anything remotely resembling justice. "Unlike the UN Working Group on Arbitrary Detention the district court does not consider JA's stay at the Embassy of Ecuador in London a form of detention."

“In defiance of the UN,” claimed the legal team representing the Australian national, “Sweden’s lowest court is keeping Assange detained.” An appeal is also being made to a higher court, with lawyers confident that Sweden’s international obligations will be enforced. Such confidence has an air of preposterous daring to it, given the odds against Assange.

But it is still worth trying, given that, in the words of one of Assange’s lawyers, Thomas Olsson, the court refused to address the salient issue of the case: “whether the delay in the investigation is due to the inaction of the prosecutor” which forms a ground for overturning the warrant.

Olsson is certain on to something. The court felt no compunction to actually consider the conduct of Sweden’s own prosecutors in this regard, insisting, instead, that prospects for questioning Assange on embassy grounds “outweighs the intrusion or harm the detention order causes” him.

One notable feature stands out in this entire matter: the erratic behaviour of Sweden’s prosecutors. Efforts on Assange’s part to accede to what ostensibly is deemed the purpose of the arrest warrant – questioning by the authorities – have been frustrated at the last minute. Swedish officials continue to insist they are willing, but claim logistical issues of interviewing Assange in the Ecuadorian embassy.

Much of this can be put down to the glaring antics of prosecutor Marianne Ny, who has insisted at stages that British and Swedish law somehow make a questioning process for Assange in the embassy problematic, if not legally impossible.[2]

This is sheer nonsense, with a witness statement from her (Feb 4, 2011) admitting that it was, in fact, possible to interview Assange through the Mutual Legal Assistance framework.[3] That framework makes it clear that a suspect in the UK can be questioned by telephone, videolink or through the British police themselves.[4]

In 2012, Ove Bring, Swedish professor emeritus of international law, stated in a radio interview that the matter was basic: no prosecutor wants to be shown up as a fool, and the issue of not going through it was a matter of prestige for both the team and the Swedish legal system. Besides, if the interview was ever to take place, nothing would transpire, as “the evidence is not enough to charge him with a crime.”

Ny persists in this charade, pulling out all ceremonial stops to give the impression something is credibly present. “In our opinion,” she stated on the website of the Swedish Prosecution Authority, “the public interest to continue this investigation still carries weight.”[5]

Usually, such elaborate procedures are cover for what has already been decided. Authorities in several countries want this man. It is hard to avoid the context black letter lawyers persist in doing: that the US-Swedish security relationship matters; that Assange remains the subject of Grand Jury and ongoing FBI investigations in the United States. This basic logistical arithmetic would lead anybody in his wits to be suspicious.

The effect of the District Court ruling is one of confirmed de facto detention, a state of affairs facilitated by Britain and Sweden by ignoring the asylum status of Assange. It was entirely satisfied that grounds still existed “for JA to remain detained in absentia.” This state

of legal absurdity, and more to the point, denial, is set to continue.

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[1] <http://www.headoflegal.com/2016/02/05/the-un-working-groups-assange-opinion/>

[2] <http://content.time.com/time/world/article/0,8599,2035032,00.html#ixzz1PNBMEASW>

[3] <http://www.friatider.se/swedish-ministry-of-foreign-affairs-explains-why-assange-is-not-questioned-in-london-you-do-not-dictate-the-terms-if-you-are-a-suspect-get-it>

[4] <http://www.friatider.se/swedish-ministry-of-foreign-affairs-explains-why-assange-is-not-questioned-in-london-you-do-not-dictate-the-terms-if-you-are-a-suspect-get-it>

[5] <http://news.cision.com/aklagarmyndigheten/r/julian-assange-still-detained.c2016937>

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