

Extradition proceedings—bringing Assange to justice

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Corporate Crime Analysis: The latest step in the Julian Assange extradition saga saw the court refuse his application for the UK arrest warrant to be withdrawn. It seems now that Mr Assange has little option left but to face prison for breach of bail, or stay cooped up in the Ecuadorean embassy forever. Mark Smith, barrister at 5 St Andrew's Hill, considers the case.

Assange extradition

As many will know, Sweden requested Assange's extradition to be tried for sexual offences under a European Arrest Warrant (EAW) in 2011. His extradition was finally confirmed by the Supreme Court in 2012 but, fearing refolement to the US for his role in Wikileaks, Mr Assange fled to the Ecuadorean embassy in London. Five years later, the EAW has been withdrawn, but he is still in the embassy to avoid arrest for breaching his UK bail, an offence that carries a maximum 12-month prison term.

Recent applications

To avoid spending further time at Her Majesty's pleasure, Mr Assange applied to the court to withdraw the UK warrant. The first question—whether the UK warrant could even continue to exist after the extradition proceedings have ended—was batted swiftly away by Senior District Judge, Emma Arbuthnot. The second question—whether it would be in the public interest to execute it—was somewhat more intriguing.

The public interest

Mr Assange based his argument on five points: (i) his actions were reasonable due to fear of refolement to the US, (ii) a working group of the UN Human Rights Council ruled his situation was disproportionate, (iii) he was willing to be interviewed by a Swedish prosecutor, (iv) he has already suffered sufficiently, and (v) his extradition would no longer be ordered due to a change in the law.

Five points

SDJ Arbuthnot rejected the first argument, stating that Sweden rendering Mr Assange to the US would have created a 'diplomatic crisis' and the proper route would have been for Sweden to request permission from the UK. I note that, given the many years Assange risks serving in a US super-max prison, it is not guaranteed that the UK would provide that consent.

The second argument was undermined at root by the factual errors in the UN working group's report that the judge generously refers to as 'misunderstandings', including that Mr Assange was detained in isolation and without access to legal advice.

The third argument was always destined to fail since, although Mr Assange's suggestion of an interview in the UK might now gain more traction following the introduction of section 21B into the Extradition Act, an interview on his own terms comes nowhere close to complying with the court's order for extradition.

Mr Assange's suffering through his self-imprisonment was based on his medical issues: respiratory infections, dental issues and a 'frozen shoulder'. It cannot be an enjoyable experience to live in a small room for five and a half years. However, the judge points out that he has no restriction on visitors, food, sleep, exercise, access to the Internet, can use the balcony, and is not locked in at night. This a far cry from HMP Wandsworth: it is self-imposed.

Fifthly, the judge correctly observes that it is by no means clear Mr Assange would now benefit from the (relatively) new section 12A protection from being extradited before a prosecution decision to prosecute, not least because one (and perhaps the only) reason the proceedings cannot continue is due to his absence.

The bottom line



Despite all the arguments above, which the judge was required to address, the key point is that the court simply cannot allow a person to avoid extradition by absconding. The only reason the EAW was withdrawn is because the prosecutions are now mostly time-barred. (It is unclear why Sweden does not have a provision to freeze the limitation clock in these circumstances, like other European states.) The absence of a chance at justice for the alleged victims in Sweden is the most serious harm in this case, and the court intends to see that Mr Assange's actions do not go completely unpunished.

The case is an application by Julian Assange available :here

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