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The European arrest warrant for the surrender of
Julian Assange from the United Kingdom to
Sweden: Applicable law and analysis of the
"provisional skeleton argument" of the defence

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The European Arrest Warrant for the Surrender of Julian Assange from the United Kingdom to Sweden



Applicable law and analysis of the
“provisional skeleton argument”* of the defence
Christoffer Wong, Faculty of Law

* The “provisional skeleton argument” has – at least since the middle of January 2011 – been available to the general public at the website of the defence counsel for Julian Assange, *Finers Stephens Innocent*. This document is (per 8 February 2011) available at <http://www.fsilaw.com> under “Assange Case Papers” ⇨ “Julian Assange Material” ⇨ “Skeleton Argument”.

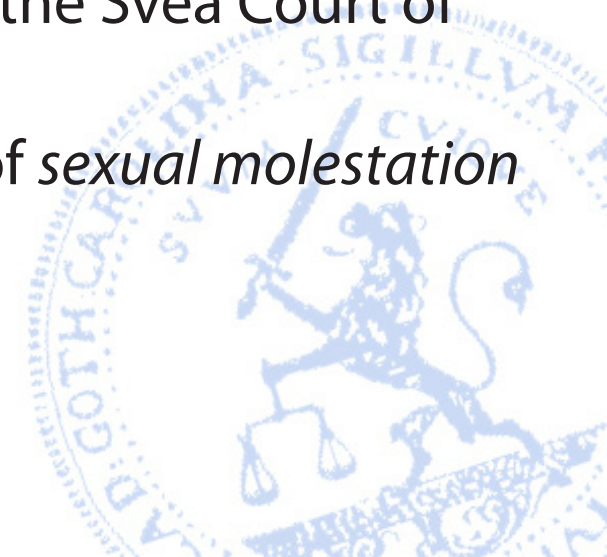
The Arrest Warrants

* Arrest warrant dated 12 November 2010

- » issued by: Marianne Ny, director of public prosecution (överåklagare)
- » based on: Order (18 October 2010, B 12885-10) of the Stockholm District Court for remand in custody of JA
- » crimes: 1 count of coercion (olaga tvång), 3 counts of sexual molestation (sexuellt ofredande) and 1 count of rape (våldtäkt)

* Arrest warrant dated 2 December 2010

- » issued by: Marianne Ny, director of public prosecution (överåklagare)
- » based on: Order (24 November 2010, Ö 9363-10) of the Svea Court of Appeal for remand in custody of JA
- » crimes: 1 count of coercion (olaga tvång), 2 counts of sexual molestation (sexuellt ofredande) and 1 count of rape (våldtäkt)

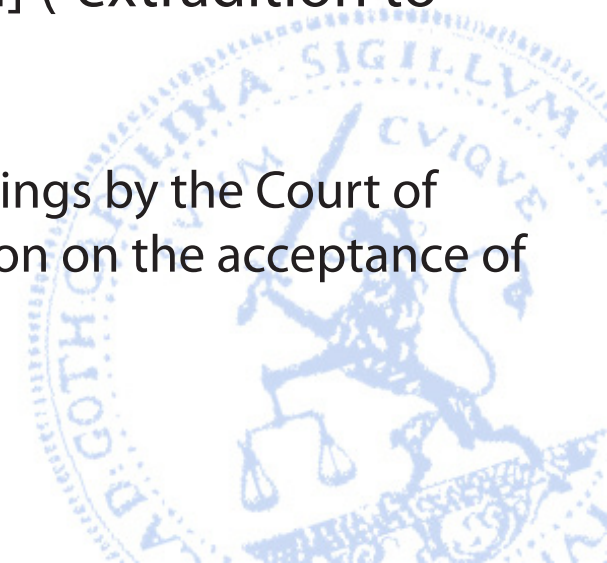


Applicable Law

- * Sweden as the issuing State:
 - » Ordinance (2003:1178) on surrender to Sweden pursuant to a European arrest warrant (*förordning om överlämnande från Sverige enligt en europeisk arresteringsorder*), based on Council framework decision (2002/584/JHA) of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (hereafter “the framework decision” or “FD”)

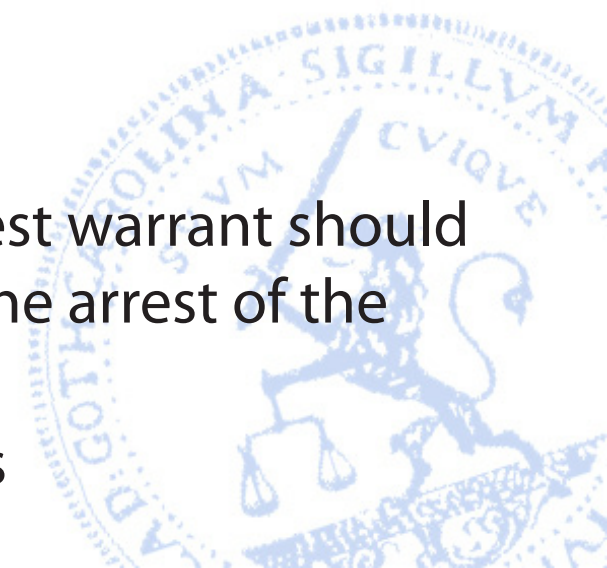
- * The United Kingdom as the executing State:
 - » **Extradition Act 2003** [based the framework decision] (“extradition to category 1 territories”)

- * UK courts are precluded from making requests for preliminary rulings by the Court of Justice of the European Union as the UK has not given a declaration on the acceptance of the jurisdiction of the ECJ under ex Article 35 EU



Surrender based on a European Arrest Warrant

- * Judicial authorities in charge of the process – not governments
- * Obligation to surrender when conditions are fulfilled – not optional
- * The issuing judicial authority's decision is *executed*, not re-examined
- * Limited grounds for non-execution of a European arrest warrant
- * Double criminality not required when the act for which surrender is requested constitutes a "list offence" according to the law of *the issuing Member State*
- * Time limit:
 - » final decision on the execution of the European arrest warrant should normally be taken within a period of 60 days after the arrest of the requested person
 - » the time limit may be extended by a further 30 days



Extradition Sweden – United States: Applicable Law

- * Extradition Act 1957:668 (**Utlänningslagen**)
- * Convention on Extradition between Sweden and the United States of America signed 24 October 1961 (SÖ 1963:17)
- * Supplementary Convention on Extradition between the United states of America and the Kingdom of Sweden signed 14 March 1983 (SÖ 1984:34)
- * Agreement on extradition between the European Union and the United States of America signed 25 June 2003 (entry into force: 1 February 2010)



Principle of speciality and further extradition to USA

* Speciality:

JA cannot – without the consent of the competent judicial authority of the United Kingdom – be prosecuted, sentenced or deprived of liberty for crimes that he may have committed before his surrender to Sweden that are not covered by the surrender from the United Kingdom pursuant to the European arrest warrant

* Further extradition:

JA cannot – without the consent of the competent judicial authority of the United Kingdom – be surrendered to another EU Member State or be extradited to a third State



'Skeleton Argument' of the Defence

- (1) Certification of the European Arrest Warrant
 - (2) Extradition sought for improper purpose
 - (3) Non-disclosure by Swedish prosecutor
 - (4) Conduct of the prosecution in Sweden
 - (5) Extradition offences
 - (6) Extraneous considerations pursuant to sec. 13 Extradition Act 2003
 - (7) Human rights issues (sec. 21 Extradition Act 2003)
- } abuse of process



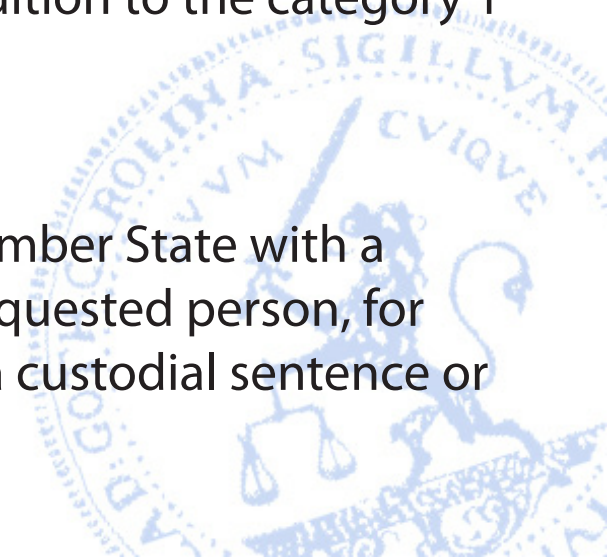
Certification of the European Arrest Warrant

- * Defence asserts that the Swedish National Police Board is the sole competent issuing authority, citing *Enander v. The Swedish National Police Board* [2005] EWHC 3036 (Admin)
- * On the competent issuing authority, see Sweden's communication to Council of 19 December 2003 ([16288/03](#))



Extradition sought for improper purpose

- * Defence argues that extradition has been sought for the purpose of questioning JA further, and not for the purpose of prosecution, citing, *inter alia*, *Re Ismail* [1999] 1 AC 320, *Vey v. The Office of the Public Prosecutor of the County Court of Montluçon* [2006] EWHC 760 (Admin), *Trenk v. District Court in Plzen-Mesto* [2009] EWHC 1132 (Admin) and *Asztalos v. Szekszard City Court* [2010] EWHC 237 (Admin).
- * Sec. 2(3), Extradition Act 2003:
“The statement is one that—
(a) the person in respect of whom the Part 1 warrant is issued is accused in the category 1 territory of the commission of an offence specified in the warrant, and
(b) the Part 1 warrant is issued with a view to his arrest and extradition to the category 1 territory for the purpose of being prosecuted for the offence.”
- * Art. 1(1) FD:
“The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.”



Additional limbs of abuse of process

- * Non-disclosure of information by the Swedish prosecutor
- * The conduct of the prosecution in Sweden



The offences are not extradition offences

- * 'Rape': does not require double criminality – immaterial whether definition of 'rape' is different under English law (sec. 1, [Sexual Offences Act 2003](#))
- * 'Coercion' and 'sexual molestation' subject to requirement of double criminality – likely to be qualified as 'sexual assault' under English law



Extraneous considerations pursuant to sec. 13

Section 13 – Extraneous considerations

A person's extradition to a category 1 territory is barred by reason of extraneous considerations if (and only if) it appears that—

- (a) the Part 1 warrant issued in respect of him (though purporting to be issued on account of the extradition offence) is in fact issued for the purposes of prosecuting or punishing him on account of his race, religion, nationality, gender, sexual orientation or political opinions, or
- (b) if extradited he might be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, nationality, gender, sexual orientation or political opinions.



Human rights considerations pursuant to sec. 21

- * Breach of Article 3 ECHR (torture), with reference to the rendition cases, and risk of extradition to the United States.
- * Breach of Article 6 (fair trial), Article 8 (private and family life) and Article 10 (freedom of expression) ECHR.

