



Courts and Tribunals Judiciary

PRESS SUMMARY

26 MARCH 2024

JULIAN PAUL ASSANGE

-and-

(1) GOVERNMENT OF THE UNITED STATES OF AMERICA
(2) SECRETARY OF STATE FOR THE HOME DEPARTMENT

[2024] EWHC 700 (ADMIN)

Divisional Court: President of the King's Bench Division and Mr Justice Johnson

Background to the Claim

The Government of the United States of America seeks the extradition of Mr Assange for 18 offences relating to the obtaining and publication of sensitive intelligence. Following a hearing in the Magistrates' Court and an earlier appeal to the Divisional Court, the Senior District Judge sent the case to the Secretary of State who ordered Mr Assange's extradition. Mr Assange seeks to appeal against the decision to send the case to the Secretary of State and the Secretary of State's decision to order his extradition. He wishes to advance 9 separate grounds of appeal. He may only do so if he is given leave by the court. The court gives leave to bring a ground of appeal if and only if the ground of appeal has a real prospect of success.

Judgment

The Divisional Court considers that Mr Assange has a real prospect of success on 3 of the 9 grounds of appeal (grounds iv), v) and ix)). It has given the Government of the United States of America and the Secretary of State an opportunity to offer assurances that would address those grounds of appeal. Unless satisfactory assurances are provided, the Court will grant leave to appeal on those grounds of appeal. The Court refuses leave to appeal on the other 6 grounds (i), ii), iii), vi), vii) and viii)) which do not have any merit.

Mr Assange will not, therefore, be extradited immediately. The Court has given the Government of the United States 3 weeks to give satisfactory assurances: that Mr Assange is permitted to rely on the First Amendment to the United States Constitution (which protects free speech), that he is not prejudiced at trial (including sentence) by reason of his nationality, that he is afforded the same First Amendment protections as a United States citizen and that the death penalty is not imposed.

If those assurances are not given, then leave to appeal will be given and there will then be an appeal hearing. If assurances are given then the parties will have a further opportunity to make representations, and there will be a further hearing on 20 May 2024 to decide if the assurances are satisfactory, and to make a final decision on leave to appeal.

Reasons for the judgment

Extradition is regulated by legislation passed by Parliament: the Extradition Act 2003. The role of the Magistrates' Court and the Secretary of State is to determine whether extradition is barred by the 2003 Act. If so, Mr Assange must be discharged. If not, his extradition must be ordered. Leave to appeal should be granted only if it is arguable that the Magistrates' Court or the Secretary of State was wrong: **paras 17 to 33.**

Grounds i) and viii): UK-US Extradition Treaty prohibits extradition for a political offence (and the offences with which Mr Assange is charged fall within that category)

The court refuses leave to appeal on grounds i) and viii).

The court must apply the law passed by Parliament, the Extradition Act 2003. Earlier UK legislation prohibited extradition for a political offence, but that legislation has been repealed and the 2003 Act does not prohibit extradition for a political offence. Parliament has chosen not to incorporate the Treaty into UK law and not to prohibit extradition for a political offence. The Treaty does not create personal rights that can be enforced by the courts. It is not a breach of article 5 of the European Convention of Human Rights (the Convention), or an abuse of the court's process, to seek extradition for a political offence, contrary to the terms of an unincorporated treaty: **paras 76 to 103 and 212 to 218.**

Ground ii) The extradition request was made for the purpose of prosecuting Mr Assange on account of his political opinions (contrary to section 81(a) of the 2003 Act)

The court refuses leave to appeal on ground ii).

The prosecutor gave sworn evidence that extradition is sought not because of Mr Assange's political opinions, but on account of the extradition offences with which he is charged and so that he can be tried for those offences. Mr Assange does not accuse the prosecutor of dishonesty. The judge found, on the evidence, that Mr Assange had not shown that the request was made for the purpose of prosecuting him on account of his political opinions as opposed to being made on account of the extradition offences. It is not arguable that the judge was wrong: **paras 43 to 45 and 104 to 118.**

Ground iii) Extradition is incompatible with article 7 of the Convention (no punishment without law)

The court refuses leave to appeal on ground iii).

The judge correctly took account of rights under the United States Constitution which are similar to article 7 of the Convention. The evidence shows that the United States courts will examine the law underpinning the charges to ensure that it is sufficiently clear and precise and does not infringe on expression to a degree greater than justified. It is not arguable that the judge was wrong to conclude that Mr Assange would not be exposed to a real risk of suffering a violation of his article 7 rights in the United States: **paras 119 to 128.**

Ground iv) Extradition is incompatible with article 10 of the Convention (freedom of expression)

The court will grant leave to appeal on ground iv), unless a satisfactory assurance is provided by the Government of the United States of America.

The First Amendment to the United States Constitution gives strong protection to freedom of expression, which is similar to the protection provided by article 10 of the Convention. On the assumption that Mr Assange is permitted to rely on the First Amendment (see ground v) below), it is not arguable that extradition will give rise to a real risk of a flagrant denial of his article 10 rights.

Aside from 3 charges, the extradition offences concern conduct which is contrary to the ordinary criminal law and which does not directly concern free expression rights. The prosecution of such conduct does not involve a flagrant denial of the rights protected by article 10 of the Convention.

Insofar as Mr Assange is charged with 3 charges of disclosing information, the charges are limited to the public disclosure of the names of human intelligence sources. There is a strong public interest in protecting the identities of human intelligence sources, and Mr Assange has not identified any countervailing public interest justification for disclosure. There are strong reasons, as the judge found, to conclude that Mr Assange's activities did not accord with the "tenets of responsible journalism."

However, if (as might be the case) Mr Assange is not permitted to rely on the First Amendment then it is arguable that his extradition would be incompatible with article 10 of the Convention: **paras 128 to 162.**

Ground v) If extradited, Mr Assange might be prejudiced at his trial by reason of his nationality (contrary to section 81(b) of the 2003 Act)

The court will grant leave to appeal on ground v), unless a satisfactory assurance is provided by the Government of the United States of America.

The prosecutor has said that he may argue at trial that "foreign nationals are not entitled to protections under the First Amendment". If such an argument is made, and if it succeeds, then it is arguable that Mr Assange might be prejudiced at his trial by reason of his nationality. Given that the prosecutor has said that he may raise this argument, it is reasonable to proceed, for the purposes of this application, on the basis that the argument might be made and that it might succeed: **paras 163 to 179.**

Ground vi) Extradition is incompatible with article 6 of the Convention (right to a fair trial)

The court refuses leave to appeal on ground vi).

It is not arguable that the judge was wrong to conclude that there was no real risk that there would be a flagrant denial of Mr Assange's right to a fair trial. That includes the approach to the indictment, plea bargaining, venue for trial, jury selection, dealing with prejudicial comment, an allegation that evidence was obtained by torture, and the approach taken to sentencing: **paras 180 to 202.**

Ground vii) Extradition is incompatible with articles 2 and 3 of the Convention (right to life, and prohibition of inhuman and degrading treatment)

The court refuses leave to appeal on ground vii).

The judge took account of evidence that the CIA had planned to kidnap Mr Assange from the Ecuadorian Embassy. She concluded that this was not related to the extradition proceedings, and that it had not been shown that any risk would arise if he was extradited to the United States. Mr Assange wishes to rely on fresh evidence on these matters, but it is not arguable that the judge would have reached a different conclusion if she had considered the fresh evidence. Mr Assange is not therefore entitled to rely on the fresh evidence. The fresh evidence is the sole basis for this ground of appeal, so there is no merit in this ground: **paras 203 to 210.**

Ground ix) Extradition is barred by inadequate specialty/death penalty protection.

The court will grant leave to appeal on ground ix), unless a satisfactory assurance is provided by the Government of the United States of America.

The Secretary of State agrees that, if he is extradited, Mr Assange could be charged with offences that carry the death penalty and that there is nothing then to prevent the death penalty from being imposed. On that basis, the court considers it is arguable that the Secretary of State was wrong to order extradition and that she should have concluded that extradition is barred by inadequate specialty/death penalty protection: **paras 220 to 238.**

Assurances

The court has found that Mr Assange has an arguable case on grounds iv), v) and ix). Unless the Government of the United States of America and the Secretary of State provide satisfactory assurances in respect of those grounds, the court will grant leave to appeal on each of those grounds.

It is open to the United States of America and the Secretary of State to offer assurances that would address each of those grounds: that Mr Assange is permitted to rely on the First Amendment, that he is not prejudiced at trial (including sentence) by reason of his nationality, that he is afforded the same First Amendment protections as a United States citizen and that the death penalty is not imposed: **paras 237 to 242.**

Note

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments>