

Assange & Sweden

**MEMORANDUM FROM
PROSECUTOR MARIANNE NY**

Submitted to extradition hearing held 7-8 February 2011
at City of Westminster Magistrates' Court,
Judge Howard Riddle presiding

For additional information, see:
www.nnn.se/nordic/assange.htm



REGERINGSKANSLIET

JuBC2011/404/BIRS

04 February 2011

Ministry of Justice
Sweden

*Division for Criminal Cases and
International Judicial Co-operation
Legal Adviser*

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The Crown Prosecution Service's HQ
Special Crime Division
Att: Crown Prosecutor Paul Close
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Via fax only

**Re. European Arrest Warrant and the Surrender procedures between
Member States**

Dear Sir or Madam,

At the request of Mrs. Marianne Ny, Director of the Public Prosecution Authority, the Ministry of Justice hereby has the honour of forwarding the enclosed document.

Yours sincerely,


Nils Västberg
Legal Adviser

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Överåklagare Marianne Ny

2011-02-04

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Ärende AM-131226-10
Handläggare 102E-12

I Marianne Ny, a Director of Public Prosecutions based at the Prosecution Development Centre in Gothenburg, Sweden make this statement by way of clarification of certain legal matters raised on behalf of Julian Assange.

A. Authorisation to issue an EAW

1. I am authorised to issue a European arrest warrant ("EAW") pursuant to section 3 of the 2003:1178 Ordinance on surrender to Sweden according to the European arrest warrant. This states that a Prosecutor is authorised to issue a European arrest warrant for criminal proceedings.
2. The Prosecutor General's regulations ASF 2007:12 state that public prosecutors are authorised to issue an EAW.
3. Chapter 7, section 1 of the Swedish Code of Judicial Procedure recites that the following persons constitute public prosecutors: the Prosecutor General, Deputy Prosecutor General, Director of Public Prosecutions, Deputy Director of Public Prosecutions, Chief Public Prosecutor, Deputy Chief Public Prosecutor and Public Prosecutor.
4. If a domestic arrest warrant has been issued for a person suspected of a crime punishable by a sentence of at least one year imprisonment, an EAW for criminal proceedings may be issued.

B. The aim of the EAW

5. Julian Assange's surrender is sought in order that he may be subject to criminal proceedings.
6. A domestic warrant for the Respondent's arrest was upheld 24th November 2010 by the Court of Appeal, Sweden. An arrest warrant was issued on the basis that

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Julian Assange is accused with probable cause of the offences outlined on the EAW.

7. According to Swedish law, a formal decision to indict may not be taken at the stage that the criminal process is currently at. Julian Assange's case is currently at the stage of "preliminary investigation." It will only be concluded when Julian Assange is surrendered to Sweden and has been interrogated.
8. The purpose of a preliminary investigation is to investigate the crime, provide underlying material on which to base a decision concerning prosecution, and prepare the case so that all evidence can be presented at trial. Once a decision to indict has been made, an indictment is filed with the court. In the case of a person in pre-trial detention, the trial must commence within 12 weeks. Once started, the trial may not be adjourned. It can therefore be seen that the formal decision to indict is made at an advanced stage of the criminal proceedings. There is no easy analogy to be drawn with the English criminal procedure. I issued the EAW because I was satisfied that there was substantial and probable cause to accuse Julian Assange of the offences.
9. It is submitted on Julian Assange's behalf that it would be possible for me to interview him by way of Mutual Legal Assistance. This is not an appropriate course in Assange's case. The preliminary investigation is at an advanced stage and I consider that is necessary to interrogate Assange, in person, regarding the evidence in respect of the serious allegations made against him.
10. Once the interrogation is complete, it may be that further questions need to be put to witnesses or the forensic scientists. Subject to any matters said by him, which undermines my present view that he should be indicted, an indictment will be lodged with the court thereafter. It can therefore be seen that Assange is sought for the purpose of conducting criminal proceedings and that he is not sought merely to assist with our enquiries.

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11. It is not correct to assert that Assange has made repeated offers to be interviewed. In September and October 2010 I was in constant contact with his counsel Bjorn Hurtig. It was not possible to arrange an interview because Assange did not come back to Sweden, despite my request that he did. Frequently, Hurtig was not able to contact Assange to arrange the details for him to attend for interview. An offer of an interview by telephone was made by Hurtig. I declined this offer for the reasons outlined above. It was because of his failure to attend Sweden for interview and so that criminal proceedings could continue, that it was necessary for me to request from the court an order for his arrest.

C. Pre-trial detention

12. It is incorrect to state that a person accused of rape will automatically be held in pre-trial detention. A person may be held in pre-trial detention if the court finds that the prosecution case discloses probable cause that the offence was committed and that there is a risk that he will abscond and/or interfere with evidence. The court will release an accused if the former or the latter condition is not satisfied. The court reviews the pre-trial detention every two weeks. The defendant may request that this review is by way of court hearing and once a request is made it shall be heard by the court.
13. Insofar as a person accused of rape is concerned, only where the offence attracts a minimum of 2 years imprisonment is there a presumption that the person will be kept in detention pending trial. In Mr Assange's case he is currently accused of minor rape, which does not have a minimum term of imprisonment. Therefore, there is no presumption that he will be detained pending trial. On surrender to Sweden, he must be placed before the court within 96 hours. The court will consider pre-trial detention at that stage according to the criteria outlined at paragraph 12 above.

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14. If a person has been detained because the court suspects that they will interfere with the evidence, then conditions may be imposed e.g. restrictions on telephone calls, edited newspapers. There is no restriction on telephoning his defence counsel, which are not monitored.

D. Public hearing

15. It is correct that tape trials in Sweden are often heard in private, with members of the public and the press being excluded. The decision as to whether the course should be taken is a matter for the court after hearing representations from the prosecution and the defence. The concern for the court is that conditions are such that the complainants are able to give the best evidence and that any harm to them is avoided.
16. The court will consider whether it is necessary for all of the proceedings to be heard in private or only part. If a case is heard in private, a transcript of the hearing may be released after.

4th February 2011



Marianne Ny