

## Would Assange be extradited if his case was tried today

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An important allegation in Assange's submission is that he would not have been extradited if his case had been tried today with the new legislation and a new ruling in the Supreme Court. In order to get the full picture of this allegation a collection of statements from Assange's submission is below:

3. iv *The failure to acknowledge in Mr. Assange's case, that UK law and procedure has now been altered so that he would no longer, if facing arrest today, be liable to extradition under the European Arrest Warrant (and yet no benefit from that change in the law has been facilitated to him).*

12. ... *Mr. Assange had exhausted his domestic remedies in the UK, there having been findings against him in the High Court and the Supreme Court on two separate issues of law. There have now been decisions on those issues which have radically changed the position so that the Mr. Assange, if his extradition was sought by Sweden today, would no longer face extradition.*

13. ... *That position has not been revised, nor any further statement made concerning his extradition to Sweden although the UK has now revised its practices (and the UK Supreme Court revised the law) so as to accommodate and agree with the challenges raised by Mr. Assange to his extradition. Thus he continues in a position of his extradition having been ordered, which would have been by now achieved had asylum not been granted by Ecuador, and yet where he would be the last individual to be extradited on a basis now acknowledged to be wrong in both law and in principle, and in violation of promises given to parliament at the time of the introduction of the Extradition Act relating to European Arrest Warrants. ...*

### **The Changed basis of UK Law**

15. *The Anti Social Behaviour, Crime and Policing Act 2014 now in force under Section 156 introduces a bar to extradition whereby an "accusation" will be insufficient to require extradition. Section 156 is clearly intended to (and will) change the way that UK courts approach the issues that arose in Mr. Assange's case in the High Court. Now a charge (rather than a preliminary accusation) will be required to facilitate extradition under a European Arrest Warrant. (A number of countries have long insisted upon this; the UK has now brought its legislation and practice into conformity with a number of other European countries. Mr. Assange is not charged, only accused, and could not now be extradited from the UK to Sweden.*

16. *The recent UK Supreme Court decision in Bucnys v. Ministry of Justice Lithuania (and others) decided that the "fifth reason" for refusal of the Mr. Assange's case in the challenge in the Supreme Court was wrongly decided. The court recognised that this fifth reason was, "the only one that received any real endorsement even in the other majority judgments in the case." Had the fifth reason not been factored into the decision in Mr. Assange's case, the result would have been different and by that route also, his extradition would now, if decided today, be decided differently. In that case the issue raised by Mr. Assange in the Supreme Court for the first time, had argued that the requesting judicial authority, could not be a prosecutor (as is the case in Sweden). Instead, the requesting authority must have the true hallmarks of a judicial authority, in particular independence from the executive.*

22. ii. *The failure of the UK to refuse to facilitate an extradition warrant where the accusation is self-evidently contradictory and unsafe, has not constituted a prima facie case, but moreover, where it is an accusation and not a charge, and has been issued by a prosecutor and not a judicial authority. The recognition of the UK that neither is a satisfactory basis for an extradition request to be complied with, has been stated as not applying retrospectively to Mr. Assange, but yet further, no attempts have been made in the light of these changed circumstances to resolve his case fairly, equitably, and in recognition that these are not only the current laws of the UK, but the principles upon which the UK intends to base its acceptance or progression of extradition requests for others but not for Mr. Assange, whose case raised both issues by which others have now benefited.*

24 ii. *Require the United Kingdom authorities urgently to consider the effect of the changes in United Kingdom law and relevant legal precedent that, if previously implemented, would have resulted in the dismissal of the Order for his extradition;*

51. *In the present case, the arbitrary nature of Mr. Assange's confinement in the Ecuadorian Embassy is grounded in the following factors:*

*a.i. The failure of the United Kingdom authorities to give effect to the changes in its own law, both in the Supreme Court decision and in legislation, either to provide Mr. Assange with an assurance regarding non-refoulement, or safe passage to Ecuador (Categories II and IV);*

### **How has the UNWGAD handled this allegation**

In the edited version of Assange's submission this allegation is completely removed. Sweden and the UK was not given an opportunity to respond.

Nevertheless, in UNWGAD's Opinion on Assange this "secret" allegation is made into fact. It is obvious from the Opinion that the wording of this allegation originates from Assange's comment on the Swedish response. The wording in s.69, Comments from the source, and s.98, Discussion, is identical.