

3 February 2014

Mounting Criticism of Swedish Prosecution in Assange Case

After more than three years, the poorly justified pursuit of Julian Assange is being publicly challenged by Swedish legal experts

For well over three years, a Swedish prosecutor has sought to extradite Julian Assange from England for questioning on suspicion of sexual misconduct. Her basis for and manner of doing so have raised suspicions of prosecutorial misconduct*, but public debate on that issue has been limited.

Recently, however, legal experts have begun to express criticism in major media about the conduct of the case. In early January this year, the Stockholm daily *Svenska Dagbladet*, published an opinion piece by a retired prosecutor under the headline, "Time to conclude the Assange case".

"Since the record of the preliminary investigation has leaked out and is accessible via the Internet, anyone who wants to can assess the available evidence," notes Rolf Hillegren. "And I believe that few people with reasonably good training in the evaluation of evidence would conclude anything other than that the case should be dismissed.... The situation regarding the two women [involved] has mainly to do with differences of opinion regarding the use of condoms — a type of dispute that is not usually resolved in our courts."

Unfortunately, argues Hillegren, "Prestige has become involved and the prosecutor has painted herself into a corner. There she remains and, alas, she has taken with her a large portion of the Swedish justice system which has now shamed itself for over three years."

Hillegren also notes that there is nothing to prevent the prosecutor, Marianne Ny, from questioning Assange in London where he has spent the past 19 months as a refugee in the Ecuadorian Embassy. That point has also been made by Justice Stefan Lindskog of Sweden's Supreme Court. During a visit to Australia in April last year, Lindskog stated that the Assange case was "a mess" and added that, "It is possible that the prosecutor could travel to London and interrogate him there. I have no answer to the question why that has not happened."

The prosecutor's response to that question has thus far consisted of formulations such as, "There is a significant risk that an interview in London would not move the investigation forward". That sort of curious reasoning has failed to convince her critics, especially since other Swedish prosecutors have been willing to take such a "risk" in places as far distant as the Balkans and Rwanda.

*See "Case History" at www.nnn.se/nordic/assange/summary.htm

Another experienced jurist who has criticized the prosecutor's conduct is Svante Thorsell. Writing in late January in *Göteborgs-Posten*, the leading daily newspaper on Sweden's west coast, Thorsell asserts that the Assange case is a judicial scandal like few others in Swedish history. "The arrest of Assange has been ordered because he has not presented himself in Sweden for interrogation — nothing more than that. He has never refused to be interviewed; on the contrary he has welcomed it, if conducted in England. For reasons of prestige, the prosecutor refuses to make such a visit. It is routine for such interviews to be held where the suspect is located."

Thorsell also points out that media and other references to "rape" is misleading in the Assange case: "In other countries, rape is a crime in which someone attempts to compel sexual intercourse by means of physical violence. In Sweden it can mean something else, which does not involve physical violence.... In this case, it is a question of whether or not a condom has been used, and whether consent has been active or passive.... The circus of the Assange case has been driven by considerations of prestige. The servants of the court have served themselves, not justice."

Perhaps emboldened by such public criticism from respectable jurists in leading print media, Swedish public television's news magazine "Agenda" devoted a segment to the issue yesterday, February 2nd. It included the first ever criticism of the prosecution by a member of the Swedish Parliament, Johan Pehrson, the Liberal Party's spokesperson on judicial matters.

"This is an exceptional case," observed Pehrson, who sits on the parliament's Justice Committee. "One may therefore consider whether or not the prosecutor should make every possible effort to resolve this matter.... The case has major political and international implications. No one is served by the present situation."

The Liberal Party is part of the current coalition government, and Pehrson's intervention — expressed with typical Swedish understatement — may be regarded as a clear signal that patience is wearing thin, at least in some influential quarters.

That message was evidently received by Ms. Ny's superior, Prosecutor-General Anders Perklev who sharply responded that, "It is quite remarkable that a member of parliament should openly question a prosecutor's decisions in a specific case. It goes against the fundamental separation of powers between legislators and executive authorities in Sweden."

As head of the national Prosecution Authority, Perklev has the authority to countermand decisions of Prosecutor Ny, but has strongly supported her handling of the Assange case from the beginning. His rebuke of M.P. Pehrson is consistent with previous statements, but is unlikely to silence the criticism that has now entered the public arena.

That was underlined by the participation of another prominent jurist in yesterday's programme — Anne Ramberg, head of the Swedish Bar Association: "This has developed into something of a circus," she observed. "A little pragmatism is needed to bring an end to this circus. One should have gone to London to interview him."

Ramberg is not certain that the investigation will lead to formal charges against the suspect. "It is not inconceivable that an interview with Assange would result in the case being dropped. But that possibility will be excluded by not taking contact with him," she observed.

These and other developments suggest that Swedish opinion in the Assange case may now be shifting to a less aggressive mode. The potential significance of such a shift applies also to Sweden's mainstream media, which for the past three years have conducted a fairly systematic campaign of defamation against Julian Assange.

"The Assange case started a veritable collective media frenzy," notes Helene Bergman, a journalist and well-known feminist who for many years hosted a popular public-radio programme on women's issues. "From at first having been a hero to male journalists, Assange as a suspect had to be brought down in the name of Swedish feminism by all available means. I don't believe I have ever read so much hate from journalists.

"Swedish media bear a heavy responsibility for the fact that Julian Assange has been locked up in Ecuador's London embassy for over a year now," concludes Bergman.

— Al Burke