

VĚRA JOUROVÁ
Member of the European Commission

Brussels,

Dear Honourable Members of the European Parliament,

Thank you for your letter registered on 21 June 2019, addressed to First Vice-President Mr Timmermans. In your letter, you express your concerns regarding the situation of Mr Assange, in particular a possible extradition of Mr Assange from the UK to the US.

We understand that the next stage in the extradition proceedings in the UK is an extradition Court hearing, currently set to begin on 25 February 2020.

If the Magistrates' Court finds that extradition is not barred, the case will be sent to the Home Secretary to decide whether to order extradition. The Home Secretary's extradition decision is subject to a right of appeal.

We would like to clarify that the Commission cannot interfere or have any influence in relation to judicial proceedings in front of the British Court. This is part of the judicial independence.

However, it should be noted that Article 19 of the Charter of Fundamental Rights of the European Union provides that no one may be extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment. More precisely, as the Court of Justice held in its judgment in Case C-182/15 *Petruhhin*¹, the competent UK authorities must verify that the extradition will not prejudice the rights referred to in Article 19 of the Charter of Fundamental Rights of the European Union.

In addition, Article 13 (Capital punishment) of the Agreement on extradition between the European Union and the United States of America provides that:

Where the offence for which extradition is sought is punishable by death under the laws in the requesting State and not punishable by death under the laws in the requested State, the requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the requesting State, on condition that the death penalty if imposed shall not be carried out. If the requesting State accepts extradition subject to conditions pursuant to this

¹ Judgment of the Court of Justice of 6 September 2016, *Petruhhin*, C-182/15, ECLI:EU:C:2016:630.

Article, it shall comply with the conditions. If the requesting State does not accept the conditions, the request for extradition may be denied.²

Similarly, in case of persons who make an application for international protection to a Member State, Member States may, by way of exception from the applicant's right to remain in the Member State pending the examination of the application, extradite the applicant to a third country where it is satisfied that an extradition decision will not result in direct or indirect refoulement in violation of the international and Union obligations of that Member State. Moreover, a right to remain on the basis of the EU acquis on asylum cannot be derived from an application for asylum to a third country.

With regard to the Directive on the protection of persons reporting on breaches of Union law, which protects persons reporting information on breaches acquired in a work-related context, it should be noted that it is not yet in force. It is expected to be formally adopted in the autumn 2019 (Member States will then have two years to transpose it into national law).

In any event, the Commission cannot take a position on a particular case; once the Directive is transposed, it will be the role of national authorities, including national courts, to ascertain the facts in each individual case, so as to determine whether a person qualifies as a whistleblower under this Directive and meets its conditions to benefit from protection, taking into account the particular circumstances of the case.

I will follow closely further developments on this matter.

Yours faithfully,



Věra Jourová

To:

Members of the European Parliament

Miguel Urbán Crespo, Estefanía Torres Martínez, Xabier Benito Ziluaga, Tania González Peñas, María Eugenia Rodríguez Palop, Idoia Villanueva Ruiz, Sira Rego, Manuel Pineda, Fernando Barrena, Josep Maria Terricabras, Martina Anderson, Matt Carthy, Lynn Boylan, Liadh Ní Riada, Manuel Bompard, Younous Omarjee, Emmanuel Maurel, Leila Chaibi, Anne-Sophie Pelletier, João Pimenta Lopes, Monika Beňová, Sofia Sakorafa, Kateřina Konečná, Neoklis Sylikiotis, Ana Gomes, Özlem Alev Demirel, Helmut Scholz, Gabriele Zimmer, Cornelia Ernst, Jakob Dalunde, Stelios Kouloglou, Patrick Le Hyaric, Barbara Spinelli, Ana Miranda, Dimitrios Papadimoulis, Takis Hadjigeorgiou, Stefan Eck

² The Agreement on extradition between the European Union and the United States of America, OJ L 181, 19.07.2003, p. 27,
<https://eur-lex.europa.eu/legal-content/EN/FXT/?uri=CELEX%3A22003A0719%2801%29>.