

Commission's decision in the case of
Assange v Various

The complainant is currently appealing against his extradition to Sweden in relation to allegations against him – as set out in a European Arrest Warrant – of unlawful coercion, rape, and two incidents of sexual molestation. He complained under Clause 1 (Accuracy) of the Editors' Code of Practice about 45 articles.

Under the terms of Clause 1 (i), "the Press must take care not to publish inaccurate, misleading or distorted information, including pictures"; in addition, under Clause 1 (ii), "a significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and – where appropriate – an apology published". The articles under complaint referred to "charges" against the complainant, his "facing charges", or his having been "charged". The complainant said that these references were inaccurate: the preliminary investigation into the allegations had not been completed, he had not been charged with any offence under Swedish law, and no decision to take the matter to trial was possible under Swedish law until the preliminary investigation had been completed.

The Commission emphasised that it was not a court, and that it did not seek to establish the strict legal meaning of the language used in the articles under complaint. Its role here was to decide whether readers would have been misled by the references about which the complainant had raised concerns. More specifically, under the terms of Clause 1 (ii) of the Code, it had to determine whether the articles had contained a "significant inaccuracy, misleading statement or distortion" such that a correction was required. Nonetheless, in evaluating the references under Clause 1, the Commission had to have regard for the relevant evidence, including a judgment handed down on 2 November by the High Court in the case of *Assange v Swedish Prosecution Authority*.

It was not in dispute that the complainant had not been formally charged by Swedish authorities. As such, a claim that Swedish prosecutors had formally indicted the complainant with offences would clearly raise a breach of Clause 1 (i) of the Editors' Code. However, the articles under complaint had not made such a claim: rather, they had alluded to "charges" more generally. In the view of the Commission, this conveyed to readers, accurately, that the complainant was being accused by Swedish prosecuting authorities of having committed the offences (and that prosecutors were seeking his extradition with a view to his potentially being tried for those offences).

The Commission noted the terms of the European Arrest Warrant, as set out in the High Court judgment. This described the four relevant offences in some detail, specifying the dates on which they had allegedly occurred and the precise nature of the alleged behaviour. The High Court found that "the terms of the EAW read as a whole made clear that ... [the complainant] was required for the purposes of being tried after being identified as the perpetrator of criminal offences". The Commission noted from the judgment that Swedish criminal procedure differs from English criminal procedure. The High Court found that "Although it is clear a decision has not been taken to charge him, that is because, under Swedish procedure, that decision is taken at a late stage with the trial following quickly thereafter. In England and Wales, a decision to charge is taken at a very early stage; there can be no doubt that if what [the complainant] had done had been done in England and Wales, he would have been charged and thus criminal proceedings would have been commenced". The Commission further noted the position of Swedish prosecutors that under Swedish law, the complainant could only be indicted after he had been questioned again, which was not possible in his absence from the country.



The Commission acknowledged the emphasis that the complainant placed on the fact that he had not been formally indicted by Swedish prosecutors; this was a key element of his appeal against extradition. However, it decided that in the context of the articles under complaint, the distinction between an accusation being specified in a formal indictment by the Swedish Prosecution Authority and its being specified in a European Arrest Warrant was not a matter of significance under the terms of the Editors' Code. In each case, it was an allegation that might or might not subsequently be proved in court; to refer to a charge was not to say that the complainant was guilty. For these reasons, the Commission could not establish that it was significantly inaccurate to refer, in general terms, to the existence of "charges" against the complainant. Nonetheless, it took the opportunity to draw the complainant's concerns in this respect to the publications' attention.

Reference No. 115186

