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The detention and conviction of Julian Assange and their chilling effects on human rights

Report[1]
Committee on Legal Affairs and Human Rights
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Summary

Julian Assange and WikiLeaks rose to international prominence after the release of the "Collateral Murder" video in 2010 – a classified recording depicting the killing of civilians, including journalists, by US military forces in Iraq. Much of the leaked material released in the following months and years provided credible evidence of war crimes, human rights violations, and governmental misconduct.

In 2019, Mr Assange was indicted on 17 counts under the US Espionage Act of 1917, making him the first ever publisher to be prosecuted under this legislation for disclosing classified information obtained from a whistle-blower. Had he been convicted, he would have faced up to 175 years' imprisonment. Julian Assange was released from Belmarsh Prison on 24 June 2024 pursuant to a plea agreement with the US Department of Justice, after five years' and two months' imprisonment. He pleaded guilty to a single conspiracy charge under the US Espionage Act and was sentenced to time served.

The Committee on Legal Affairs and Human Rights observed that Mr Assange was punished, essentially, for engaging in acts of journalism. It expressed its concern that this disproportionately harsh treatment creates a dangerous chilling effect and a climate of self-censorship affecting all journalists, publishers and others reporting matters essential for the functioning of a democratic society.

The committee proposed several measures to reverse this trend. These include a call for reform of the US Espionage Act and offering better protection to whistle-blowers.

1. Reference to committee: Doc. 15777, Reference 4762 of 9 October 2023.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls the importance of a free press, whose role of a "public watchdog" ensures the proper functioning of a democratic State governed by the rule of law. This role is particularly relevant in light of the seriousness of ongoing armed conflicts and the increasing number and gravity of acts of transnational repression. In this context, the harsh treatment of Julian Assange, who was recently released from custody after more than a decade of politically motivated prosecution for his journalistic work, merits particular attention.

2. Julian Assange and WikiLeaks rose to international prominence after the release of the "Collateral Murder" video in 2010 – a classified recording depicting the killing of civilians, including journalists, by United States (US) military forces in Iraq. In the following months, WikiLeaks published scores of other classified US material, disclosed by a whistle-blower, Chelsea Manning. Much of the leaked material, including the "Collateral Murder" video, provided credible evidence of war crimes, human rights violations, and governmental misconduct.

3. WikiLeaks' publications also confirmed the existence of secret detention sites, abductions and illegal transfer of prisoners conducted by the United States of America within Europe, which were first reported by the Assembly in 2006 and 2007. In Resolution 1838 (2011) "Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations", the Assembly welcomed WikiLeaks' release of numerous diplomatic reports confirming the Assembly's findings while noting that "in some countries, in particular the United States, the notion of State secrecy is used to shield agents of the executive from prosecution for crimes such as abduction and torture, or to stop victims from suing for compensation".

4. Shortly after WikiLeaks' initial publications of classified material, Julian Assange became a person of interest in a criminal investigation in Sweden, concerning alleged sexual misconduct. Following his lawful departure from Sweden, he was arrested in London under a European Arrest Warrant issued by the Swedish judicial authorities. He was released shortly after that to house arrest, having been granted bail pending the outcome of his surrender proceedings. The house arrest continued for some 550 days. Eventually, the United Kingdom Supreme Court refused Mr Assange's appeal against an extradition order granted by the United Kingdom Home Secretary. In fear of being extradited from Sweden onwards to the United States, where he could have faced a *de facto* life sentence, Mr Assange violated bail conditions and sought diplomatic asylum in the Ecuadorian Embassy in London. He has never been charged with any crime in Sweden, and the investigation into his alleged transgressions was finally discontinued in 2019. In its 2015 opinion on the detention of Julian Assange, the United Nations Working Group on Arbitrary Detention criticised the Swedish prosecuting authorities for their lack of dilligence and respect for Mr Assange's procedural rights.

5. Mr Assange was expelled from the Ecuadorian Embassy in April 2019, arrested and remanded in the high-security Belmarsh prison in London, where he initially served a sentence for violating bail conditions and then awaited the decision on his possible extradition to the United States. In the course of the judicial proceedings, Mr Assange consistently argued that his extradition would risk violating Articles 3 and 10 of the European Convention on Human Rights (ETS No. 5).

6. Even though there is no denying that Julian Assange and WikiLeaks helped uncover matters of utmost public interest, Julian Assange has faced immense backlash in the United States. Nevertheless, under the Obama administration, the US Department of Justice decided against prosecuting him, believing that indicting Mr Assange could not be reconciled with freedom of expression, protected under the First Amendment and could negatively affect media freedom by establishing a dangerous precedent. Chelsea Manning was sentenced to 35 years' imprisonment for revealing classified documents to WikiLeaks, serving several years in prison before her sentence was commuted by President Obama.

7. Following the election of Donald Trump and the release of further classified materials by WikiLeaks, including the so-called "Vault 7" revelations, disclosing the Central Intelligence Agency's (CIA) software exploitation capabilities, the Department of Justice reversed its previous decision and decided to prosecute Julian Assange. Initial proceedings against him focused on charges of computer hacking. In 2019, he was also indicted under the US Espionage Act of 1917, making him the first ever publisher to be prosecuted under this legislation for disclosing classified information obtained from a whistle-blower. In total, he was indicted on 17 counts under the US Espionage Act. Had he been convicted on all of them, Mr Assange would have faced up to 175 years' imprisonment.

2. Draft resolution adopted by the committee on 10 September 2024.

8. Julian Assange was released from Belmarsh Prison on 24 June 2024 pursuant to a plea agreement with the US Department of Justice, after five years' and two months' imprisonment. On 26 June 2024, he appeared before a US federal court in Saipan. He pleaded guilty to a single conspiracy charge to obtain documents, writings, and notes connected with national defence and wilfully communicating documents relating to the national defence from a person having both lawful and unauthorised possession of same, violating the US Espionage Act. He was sentenced to time served and allowed to return to his native Australia.

9. The Assembly warmly welcomes the release of Mr Assange and his being reunited with his family. Nevertheless, it is deeply concerned that the disproportionately harsh treatment of Julian Assange, in particular his unprecedented conviction under the Espionage Act, creates a dangerous chilling effect and a climate of self-censorship affecting all journalists, publishers and others reporting matters essential for the functioning of a democratic society. Moreover, it severely undermines the role of the press and the protection of journalists and whistle-blowers around the world.

10. The Assembly is equally alarmed by reports that the CIA was covertly surveying Mr Assange in the Ecuadorian Embassy in London and was allegedly developing plans to poison or even assassinate him on United Kingdom soil. It reiterates its condemnation of all forms and practices of transnational repression.

11. The Assembly is deeply concerned by the fact that despite many documents and recordings revealed by Mr Assange and WikiLeaks, providing credible evidence of war crimes and human rights violations committed by US State agents, there is no publicly available information on anyone being held to account for these atrocities. The failure of the competent US authorities to prosecute the alleged perpetrators, combined with the harsh treatment of Mr Assange and Ms Manning, creates a perception that the United States Government's purpose in prosecuting Mr Assange was to hide wrongdoings of State agents rather than to protect national security.

12. The Assembly recognises the legitimacy of measures aimed at ensuring the adequate protection of secrets affecting national security. It reiterates its position, however, that information concerning the responsibility of State agents who have committed war crimes or serious human rights violations, such as murder, enforced disappearance, torture, or abduction, does not deserve to be protected as secret. Such information should not be shielded from public scrutiny or judicial accountability under the guise of "State secrecy".

13. The Assembly notes that State security and intelligence services, which unquestionably perform an important task, cannot be exempted from accountability for any unlawful actions. Creating a culture of impunity undermines the foundations of democratic institutions and risks provoking further abuses.

14. While recognising that some of WikiLeaks' disclosures, especially those released in unredacted form, could have posed a threat to the personal safety of informers, intelligence sources, and secret service personnel, the Assembly notes that despite the significant lapse of time, no evidence has emerged to suggest that anyone has been harmed as a result of WikiLeaks' publications in question.

15. Democratic societies can not thrive without the free flow of information and their citizens' ability to hold their governments accountable. The Assembly reiterates its strong support for freedom of expression and information as a fundamental right guaranteed by Article 10 of the European Convention on Human Rights and Article 19 of the International Covenant on Civil and Political Rights and encourages the Council of Europe member States to work tirelessly to strengthen their protection of free speech and a free press.

16. The Assembly considers the length of detention of Julian Assange in Belmarsh prison and his conviction under the Espionage Act to be out of proportion in relation to his alleged offence. It observes that Mr Assange was punished for engaging in activities that journalists perform on a daily basis: they receive leaked information from their sources and publish it where it provides credible evidence of wrongdoing.

17. The Assembly recalls that the United Nations Working Group on Arbitrary Detention considered that Mr Assange was arbitrarily detained by the governments of Sweden and the United Kingdom. It further recalls that the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Mr Nils Melzer, concluded that Mr Assange had been exposed to "progressively severe forms of cruel, inhuman or degrading treatment or punishment, the cumulative effects of which can only be described as psychological torture". The Assembly finds it concerning that the authorities of the United Kingdom appear to have ignored these opinions, further aggravating Mr Assange's situation.

18. The Assembly considers that the disproportionately severe charges brought against Julian Assange by the United States of America, as well as heavy penalties foreseen under the Espionage Act for engaging in acts of journalism fall within the criteria set out in Resolution 1900 (2012) "The definition of political prisoner".

19. The Assembly also regrets that the authorities of the United Kingdom failed to effectively protect Mr Assange's freedom of expression and right to liberty, exposing him to lengthy detention in a high-security prison despite the political nature of the most severe charges against him. His detention with a view to extradition far exceeded the reasonable length acceptable for that purpose. The Assembly regrets that the Extradition Act of 2003 removed the political offence exemption from United Kingdom extradition law, exposing dissidents and opposition members to the risk of being extradited to States prosecuting them on political grounds.

20. The Assembly considers that the misuse of the 1917 Espionage Act by the United States to prosecute Julian Assange has caused a dangerous chilling effect, dissuading publishers, journalists and whistle-blowers from reporting on governmental misconduct, thus severely undermining freedom of expression and opening room for further abuse by State authorities. To this end, the Assembly calls on the United States of America – a State having the observer status with the Council of Europe – to:

20.1. urgently reform the 1917 Espionage Act and make its application conditional on the presence of a malicious intent to harm the national security of the United States or to aid a foreign power;

20.2. exclude the application of the Espionage Act to publishers, journalists and whistle-blowers who disclose classified information with the intent to raise public awareness and inform on serious crimes, such as murder, torture, corruption, or illegal surveillance.

21. The Assembly further calls on the United States of America to:

21.1. conduct thorough, impartial, and transparent investigations into alleged war crimes and human rights violations disclosed by WikiLeaks and Mr Assange, holding those responsible to account and tackling a culture of impunity towards State agents or those acting at their behest;

21.2. co-operate in good faith with the Spanish judicial authorities to clarify all facts of the alleged unlawful surveillance of Mr Assange and his interlocutors in the Ecuadorian Embassy in London.

22. The Assembly calls on the United Kingdom to:

22.1. urgently review its extradition laws in order to prevent the possibility of extraditing individuals wanted for offences of political nature;

22.2. conduct an independent review of the treatment of Julian Assange by the relevant authorities with a view to establishing whether he has been exposed to torture or inhuman or degrading treatment or punishment, pursuant to their international obligations.

23. The Assembly calls on the Council of Europe member and observer States to:

23.1. provide adequate protection, including asylum, to whistle-blowers who expose unlawful activities of their governments and, for those reasons, are threatened with retaliation in their home States, provided their disclosures qualify for protection under the principles advocated by the Assembly, in particular, the defence of the public interest;

23.2. refrain from extraditing individuals for charges related to journalistic activities, in particular when these charges appear grossly disproportionate to the alleged offence;

23.3. continue to improve the protection of whistle-blowers and effectiveness of whistle-blowing procedures;

23.4. review their shield laws and ensure that journalists are effectively protected from being forced to reveal their sources;

23.5. increase government transparency by reducing the scope of information that can be classified as secret and encourage the spontaneous release of information not critical to national security;

23.6. implement strict guidelines and relevant oversight mechanisms to prevent the overclassification of government documents as secret, where their contents do not warrant this.

24. The Assembly also urges media organisations to establish robust protocols for handling and verifying classified information to ensure responsible reporting, thus avoiding any risk for national security and the safety of informers and sources.

B. Explanatory memorandum by Ms Thórhildur Sunna Ævarsdóttir, rapporteur

1. Introduction

1. The present report is based on a motion for a resolution tabled on 23 May 2023[3] and referred to the committee on Legal Affairs and Human Rights (the Committee) for report on 9 October 2023. The committee appointed me as rapporteur at its meeting on 23 January 2024.

2. The motion for a resolution recalls the Assembly's resolutions 2317 (2020) on "Threats to media freedom and journalists' security in Europe" and 2454 (2022) on "The control of online communication: a threat to media pluralism, freedom of information and human dignity", which recognised that the criminal prosecution and detention of Julian Assange set a dangerous precedent for journalists; called for his extradition to the United States to be barred; and demanded his prompt release. The motion for a resolution states that Mr Assange's harsh treatment risks deterring others who wish to report truthful information about armed conflicts, as the WikiLeaks publications did. The motion calls on the Assembly to consider whether the circumstances of Mr Assange´s detention fulfilled the criteria set out in Resolution 1900 (2012) "The definition of political prisoner". Furthermore, the Assembly should examine Mr Assange's case in the context of the growing threat against media freedom and retaliation against whistle-blowers throughout Europe.

3. On 20 February 2020[4] and on 19 May 2022,[5] the then Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, has called upon the United Kingdom to refrain from extraditing Julian Assange based on concerns that it could have a global chilling effect on the media. The Assembly's then General Rapporteur on the protection of whistle-blowers, Mr Pieter Omtzigt, published two statements in support of Julian Assange on 28 September 2021[6] and on 25 January 2022.[7]

4. While preparing the report, I conducted a fact-finding visit to the United Kingdom on 13-14 May 2024. I had the opportunity to visit Julian Assange in Belmarsh prison and talk to him in private for two hours. I was also able to meet Ms Stella Assange, Mr Assange's spouse, Ms Gareth Peirce, his solicitor, Mr David Morris (United Kingdom, EC/DA), and Mr Jeremy Corbyn (United Kingdom, SOC) respectively chairperson and member of the delegation of the United Kingdom to the Parliamentary Assembly, the former chairperson of the United Nations (UN) Working Group on Arbitrary Detention, Professor Mads Andenæs KC, the former UN Special Rapporteur on counter-terrorism and human rights, Professor Fionnuala Ní Aoláin KC, as well as other lawyers, journalists, psychiatrists, human rights defenders, and civil society representatives involved in Mr Assange's case. Regrettably, no representative of the UK Home Office was available to answer my request for a meeting. I am grateful to the United Kingdom's delegation to the Assembly and its secretariat for the excellent organisation of this visit.

5. Unfortunately, despite my request directed to the Permanent Observer of the United States of America to the Council of Europe, I received no reply regarding a possible meeting with a representative of the US Embassy in London.

6. At its meeting in Strasbourg on 25 June 2024 – coincidentally falling on the next day after Mr Assange's release from Belmarsh – the committee held a hearing with the participation of Professor Fionnuala Ní Aoláin and Ms Rebecca Vincent, Director of Campaigns for Reporters without Borders, and Mr Simon Crowther, legal advisor at Amnesty International.

7. In this report, I will start by describing the factual background of Mr Assange's and WikiLeaks' publications, his prosecution, detention, extradition proceedings, and, ultimately, his conviction. I will then refer to the legal framework applicable to the case at hand. Finally, I will present my conclusions, hoping that this report will contribute to preventing any other publisher from experiencing the same ordeal that Mr Assange went through over the last 14 years.

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3. Doc. 15777.
4. www.coe.int/en/web/commissioner/-/julian-assange-should-not-be-extradited-due-to-potential-impact-on-press-freedom-and-concerns-about-ill-treatment.
5. www.coe.int/et/web/commissioner/-/commissioner-calls-on-uk-government-not-to-extradite-julian-assange.
6. https://pace.coe.int/en/news/8446/pace-general-rapporteur-expresses-serious-concern-at-reports-that-us-officials-discussed-assassinating-julian-assange.
7. https://pace.coe.int/en/news/8581/assange-extradition-fight-pieter-omtzigt-welcomes-leave-for-appeal-to-the-uk-supreme-court-granted-by-the-high-court.

2. Julian Assange and WikiLeaks – background and major publications

8. WikiLeaks was founded in 2006 by the Australian programmer and activist Julian Assange. According to its website, it is a multi-national media organisation and associated library. It has specialised in the analysis and publication of large datasets of censored or otherwise restricted official materials involving war, spying, and corruption. It has published more than 10 million documents and associated analyses so far.[8]

9. One of WikiLeaks's most impactful publications was its 2010 documentary video "Collateral Murder". It showed a leaked recording from 12 July 2007, made from a US Apache helicopter over Baghdad. The recording also included real-time radio exchanges between the helicopter's crew and their commanders. The crew reported seeing about twenty men, identifying "five to six individuals with AK-47s" and requesting permission to open fire. Shortly after that, the helicopter was authorised to engage the group. Following several volleys, all men on the ground were either killed or seriously wounded. The attacking soldiers can be heard commenting "Oh yeah, look at those dead bastards", "Nice" and "Good shot". One of the wounded men appears to be trying to crawl back to safety. A crew member can be heard saying: "Come on, buddy" and "All you gotta do is pick up a weapon", in an apparent attempt to find justification to open fire on that person. It will be later revealed that the wounded man was Saeed Chmagh – a Reuters reporter who was on the ground with a colleague – Namir Noor-Eldeen (killed by the initial volley). Shortly after that, a minibus arrived at the scene, and two unarmed men tried to carry Mr Chmagh on board in an apparent rescue attempt. The helicopter crew was authorised to fire on the vehicle, despite the fact that no weapons were noticed. The two men and Mr Chmagh were killed instantly. Unbeknownst to the Apache crew, inside the minibus were two children – a five-year-old girl and a ten-year-old boy. Both were severely wounded. When American infantry reached the scene, they reported a seriously wounded child over the radio. After a moment of silence, a helicopter crew member can be heard commenting "Well, it's their fault for bringing their kids into a battle". An official report prepared by the US Army would later state that soldiers recovered an AK-47 machine gun, a rocket-propelled grenade launcher with two grenades and the cameras of the two killed journalists. The two children survived their injuries, having been evacuated to an American Combat Support Hospital and then transferred to an Iraqi medical facility.

10. On 25 July 2007 (two weeks after the shooting), the director of Reuters' Baghdad office was shown a fragment of the recording by the US Army, ending right before the helicopter had opened fire the first time. Reuters' subsequent attempts to obtain the full version of the recording under the Freedom of Information Act were unsuccessful. The military's account asserted that the two journalists were among nine insurgents killed in the engagement and described the incident as part of combat operations against a hostile force.[9] This account was proven to be misleading following the release of "Collateral Murder". The footage showed that the journalists were not engaged in combat and were instead targeted by the Apache helicopter, which mistook their cameras for weapons.

11. The full, unedited recording was disclosed to WikiLeaks by a whistle-blower, Private First Class Chelsea Manning – a US Army intelligence analyst. She was also responsible for leaking a video of the Granai airstrike – a bombing conducted by a US Air Force B-1 bomber on 4 May 2009, in which (according to various sources) between 86 to 147 Afghan civilians were killed. Other materials leaked by Ms Manning included over 260 000 classified diplomatic US cables and over 400 000 battlefield reports from Iraq and Afghanistan.

12. "Collateral Murder" was presented by Julian Assange on 5 April 2010 at the National Press Club in Washington. WikiLeaks described the "Collateral Murder" video as depicting the killing of Iraqi civilians by US forces and stated that the US military's rules of engagement were flawed. In an interview, Mr Assange called the initial attack on the group a "collateral exaggeration or incompetence" but stated that the deliberate targeting of a wounded Reuters reporter was a "murder",[10] in an apparent reference to killing a person *hors de combat* – a breach of one of the most fundamental principles of international humanitarian law, applicable in both international and non-international armed conflicts.

13. The so-called Afghan War Diary was published on 25 July 2010 and consists of 91 731 documents dated between January 2004 and December 2009.[11] Before its publication, WikiLeaks gave access to the documents, most of which were classified as "secret", to the New York Times, the Guardian, and Der Spiegel without disclosing their source. These newspapers agreed that the public interest warranted the publication of

8. https://wikileaks.org/What-is-WikiLeaks.html.
9. www.theguardian.com/us-news/2020/jun/15/all-lies-how-the-us-military-covered-up-gunning-down-two-journalists-in-iraq.
10. www.aljazeera.com/videos/2010/4/19/collateral-murder.
11. www.spiegel.de/international/world/afghanistan-explosive-leaks-provide-image-of-war-a-708314.html.

secret materials but nevertheless decided to withhold the names of operatives in the field and informants cited in the reports or anything else that could have compromised American or allied intelligence-gathering methods, such as communications intercepts.[12] The documents contained in the Afghan War Diary revealed, *inter alia*, that the US withheld evidence that the Taliban had acquired deadly surface-to-air missiles; and documented that at least 195 civilians had been killed and 174 wounded by the coalition forces, what was previously not reported to the public.[13]

14. One of the key revelations of the Afghan War Diary was the existence of a secret Task Force 373. It was an international covert military unit conducting "kill or capture" operations without trial, against the Taliban leaders. The logs reveal that Task Force 373 was involved in extrajudicial killings, responsible for the deaths of civilian men, women, and children, and even Afghan police officers who strayed into its path.[14]

15. On 22 October 2010, WikiLeaks published the Iraq War Logs – a collection of 391 832 battlefield reports prepared by the US Army – the largest leak of classified documents in US history.[15] These logs begin on 1 January 2004 and end on 31 December 2009. According to the published documents, 109 032 people died during that period – soldiers, insurgents, and civilians. According to Iraq Body Count – an NGO recording civilian deaths in Iraq – 15 000 unrecorded civilian deaths would have to be added to the public record based on what was contained in the Iraq War Logs. As was the case with the Afghan War Diary, several media outlets took part in reviewing the documents. The disclosed documents showed that US forces acquiesced to torture and other forms of ill-treatment by Iraqi security forces and that American soldiers were often involved in the killing of innocent civilians at road checkpoints.[16] According to leaked reports, more than 30 000 civilian deaths were caused by improvised explosive devices planted by other Iraqis.[17] Another leaked file revealed how a US Apache helicopter was instructed to engage surrendering insurgents. The message from the command post was that "Lawyer stated they cannot surrender to aircraft".[18]

16. On 28 November 2010, the first batch of 220 leaked classified US diplomatic cables was published by El País, Der Spiegel, Le Monde, The Guardian and The New York Times. WikiLeaks worked with these media organisations to carefully select and redact the cables before publication to protect sensitive sources and information.

17. In February 2011, two journalists from the Guardian published a book entitled "WikiLeaks: Inside Julian Assange's War on Secrecy". The book contained a password to the archive of cables, which the authors believed was temporary and no longer active. Unbeknown to them, the file containing unredacted cables with the same password was published on BitTorrent (apparently by individuals associated with WikiLeaks to create an "insurance policy" should anything happen to the portal), a website typically used to distribute pirated films and music.[19] Some users could piece the information together and gain access to the entire repository of unredacted cables, which soon became public.[20]

18. Faced with this situation, in September 2011, WikiLeaks published the full, unredacted archive of cables on its website, making them easily searchable. The decision was strongly criticised by its previous media partners, who condemned the "needless publication of the complete data" as it could put many human rights activists and US informants at risk.[21]

19. Chelsea Manning was arrested in May 2010 and charged with multiple crimes, including aiding the enemy and espionage. Following her partial guilty plea, she was court-martialled and convicted of multiple espionage counts, five theft charges, two computer fraud charges, and multiple military infractions. Importantly though, Ms Manning was acquitted of the most serious charge of "aiding the enemy" (an offence punishable with death) – something that journalists feared would affect future whistle-blowers.[22] She was sentenced to 35 years' imprisonment. During Ms Manning's sentencing hearing, Brigadier General Robert Carr, who

12. www.nytimes.com/2010/07/26/world/26editors-note.html.
13. www.theguardian.com/world/2010/jul/25/afghanistan-war-logs-military-leaks.
14. www.theguardian.com/world/2010/jul/25/task-force-373-secret-afghanistan-taliban.
15. www.spiegel.de/international/world/the-wikileaks-iraq-war-logs-greatest-data-leak-in-us-military-history-a-724845.html.
16. www.telegraph.co.uk/news/worldnews/middleeast/iraq/8085076/WikiLeaks-Iraq-war-logs-key-findings.html.
17. www.telegraph.co.uk/news/worldnews/middleeast/iraq/8082434/Secret-files-released-on-WikiLeaks-reveal-US-ignored-torture.html.
18. www.thebureauinvestigates.com/stories/2011-05-23/us-apache-guns-down-surrendering-insurgents/.
19. https://theguardian.com/world/2011/sep/01/unredacted-us-embassy-cables-online.
20. www.spiegel.de/international/world/leak-at-wikileaks-accidental-release-of-us-cables-endangers-sources-a-783084.html.
21. www.theguardian.com/media/2011/sep/02/wikileaks-publishes-cache-unredacted-cables.
22. www.bbc.com/news/world-us-canada-23506213.

headed the Information Review Task Force that investigated the impact of WikiLeaks disclosures on behalf of the Defence Department, testified that they had uncovered no specific examples of anyone who had lost their life in reprisals that followed the publication of the disclosures on the internet.[23] In May 2017, President Obama commuted Ms Manning's sentence, resulting in her release from prison.

20. Although these publications did provide serious evidence of possible war crimes and gross human rights violations, publicly available information does not indicate that anyone has ever been prosecuted in relation to these allegations. Instead, the legal focus has been shifted to Julian Assange (the publisher) and Chelsea Manning (the whistle-blower). Ms Manning remains the only member of the US Army to have ever been charged with a crime in relation to the events portrayed in “Collateral Murder”.

3. Other notable publications of WikiLeaks

3.1. Vault 7

21. In 2017, WikiLeaks released a series of documents called “Vault 7” detailing the CIA's hacking capabilities. The leaks revealed that the CIA could exploit vulnerabilities in devices such as cars, smartphones, PCs, or even smart TVs, which could be used to listen to conversations even when the device appeared to be off. The documents also exposed the CIA's ability to exploit “zero-day” vulnerabilities in software products, raising concerns about the extent of the agency's cyber capabilities and the potential risks to privacy and public security. The CIA faced criticism for stockpiling vulnerabilities to exploit them rather than working with software manufacturers to remove them. Given that the CIA was able to identify these vulnerabilities, it is safe to assume that other bodies (including rogue actors) were able to do so as well, potentially exposing thousands of users to abuse.

22. The Vault 7 publications were regarded as a blow to the intelligence community’s capabilities and led the CIA to define WikiLeaks as a “non-state hostile intelligence service”.[24] In February 2024, a former CIA software engineer was sentenced to 40 years' imprisonment for leaking the Vault 7 materials to WikiLeaks.

3.2. Guantanamo Detainee Assessment Briefs

23. In 2011, WikiLeaks, together with the Guardian, NPR, the Washington Post, the New York Times and other media outlets, published over 700 memoranda from the Joint Task Force at Guantánamo Bay to US Southern Command in Miami, Florida. These documents provided detailed information about the detainees held at the Guantanamo Bay detention camp from 2002 to 2008.

24. One such detainee was Sami al-Hajj – a Sudanese cameraman who, at the time of his arrest in Pakistan in 2001, was working for Al-Jazeera. He was held in Guantánamo for over six years before being released in 2008 without any charges. According to his detainee assessment brief, his detention in Guantánamo was deemed necessary “[t]o provide information on... the Al-Jazeera News Network's training program, telecommunications equipment, and newsgathering operations in Chechnya, Kosovo, and Afghanistan, including the network's acquisition of a video of UBL [Usama Bin Laden] and a subsequent interview with UBL”.

25. Another assessment brief concerned Mohamedou Ould Slahi, a Mauritanian engineer who was held in Guantánamo for over 14 (sic!) years without any charges having ever been pressed against him. According to his assessment brief, he was deemed to be of high intelligence value and, essentially, portrayed as a key al-Qaeda operative, responsible for the recruitment of terrorists who later crashed planes into the World Trade Centre. While detained at Guantánamo, Mr Ould Slahi began writing a memoir, later published as a book and adapted as a film. There, he recounted how he was subjected to extreme cold and noise, extended sleeplessness, forced standing for extended periods, threats against his family, sexual humiliation and mock execution at sea. In 2003, a military prosecutor assigned to his case refused to prosecute Mr Ould Slahi because his key testimonies were extracted by torture, in breach of US and international law, rendering them inadmissible in court. This did not prevent Mr Ould Slahi's detention from continuing for the following 13 years.

26. During my visit to London, I had the pleasure of talking to Mr Ould Slahi (via video link) and hearing his testimony. He recalled his utter frustration and powerlessness due to his being denied fundamental rights, such as access to court, by a State considered a model of democracy and the rule of law. Mr Ould Slahi described Julian Assange as a voice for all those deprived of their inherent right to speak up for themselves.

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23. www.theguardian.com/world/2013/jul/31/bradley-manning-sentencing-hearing-pentagon.
24. www.theguardian.com/us-news/2017/apr/14/cia-director-brands-wikileaks-a-hostile-intelligence-service.

He believed it was highly unfair to Mr Assange to be prosecuted for exposing war crimes, torture and gross human rights violations, whereas their perpetrators enjoyed absolute impunity and the Guantánamo detention camp continued to operate. Mr Ould Slahi openly credited Julian Assange with the chance of leaving Guantánamo and regaining his freedom.

4. Criminal proceedings against Mr Assange and attempts to have him extradited from the United Kingdom

27. In August 2010, the Swedish authorities opened a preliminary investigation into reports of Mr Assange's alleged sexual misconduct. Having assessed the evidence, the Chief Prosecutor of Stockholm cancelled an initial arrest warrant against Mr Assange and ordered that the preliminary investigation into the alleged conduct would continue on suspicion of the offence of "molestation".

28. Mr Assange voluntarily extended his stay in Sweden and, on 30 August 2010, was interviewed by police and answered all questions asked of him. Following an appeal against the Chief Prosecutor's decision to a Senior Prosecutor in Göteborg, it was decided that the preliminary investigation would be resumed and expanded.

29. The prosecutor deferred several requests by Mr Assange's counsel to have him interviewed. On 15 September 2010, the prosecutor informed counsel that Mr Assange was free to leave Sweden. When the counsel asked whether the interrogation could take place in the next few days, he was told it could not because the investigator was ill.

30. On 21 September 2010, the prosecutor and Mr Assange's counsel provisionally agreed on an interrogation to be held on 28 September 2010. On 27 September 2010, Mr Assange's counsel informed the prosecutor that he had been unable to contact his client. On the same day, Mr Assange lawfully departed Sweden for London. Later that day, the prosecutor ordered Mr Assange's arrest.

31. Despite issuing an arrest warrant, Mr Assange's counsel and the Swedish prosecutor were discussing possible appointments for an interview. Furthermore, counsel offered a telephone interview with Mr Assange (a lawful measure under Swedish law for purposes of the preliminary investigation). The offer was declined. Similar proposals by Mr Assange's counsel (including an in-person interview at the Australian Embassy in London) were also declined.

32. On 18 November 2010, the Stockholm District Court ordered (*in absentia*) Mr Assange's detention. On 2 December 2010, a European Arrest Warrant was issued. On 7 December 2010, Mr Assange voluntarily surrendered himself for arrest in London. He was granted bail on 16 December 2010 and released to house arrest. The house arrest continued for some 550 days. On 24 February 2011, his extradition was ordered. On 30 May 2012, the Supreme Court of the United Kingdom finally dismissed Mr Assange's appeal.

33. On 19 June 2012, Mr Assange sought refuge at the Ecuadorian Embassy in London. On 16 August 2012, he was granted diplomatic asylum due to fears of "political persecution in case of his extradition to the United States".[25]

34. On 4 December 2015, the UN Working Group on Arbitrary Detention adopted Opinion No. 54/2015, in which it considered that Mr Assange was arbitrarily detained by the governments of Sweden and the United Kingdom.[26] It called on both to assess the situation of Mr Assange, to ensure his safety and physical integrity, to facilitate the exercise of his right to freedom of movement in an expedient manner, and to ensure the full enjoyment of his rights guaranteed by the international norms on detention.

35. Mr Assange remained in the Ecuadorian Embassy until 11 April 2019, when he was arrested for violating his 2012 bail conditions. The Ambassador of Ecuador to the United Kingdom authorised police officers to enter the building. He was remanded in Belmarsh Prison – one of Britain's most secure prisons – and, shortly thereafter, sentenced to 50 weeks' imprisonment for violating bail conditions in 2012. The Working Group on Arbitrary Detention, in its statement of 3 May 2019, expressed deep concern about his conviction, calling it disproportionate and furthering the arbitrary deprivation of his liberty.[27]

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25. www.bbc.com/news/world-europe-19289649.
26. Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland), Doc. A/HRC/WGAD/2015, 22 January 2016.
27. www.ohchr.org/en/news/2019/05/united-kingdom-working-group-arbitrary-detention-expresses-concern-about-assange.

36. In September 2019, El País revealed that a Spanish private security company, Undercover Global S.L., hired to protect the Ecuadorian Embassy during Mr Assange's stay there, had spied on him for the US Central Intelligence Agency (CIA). It is alleged that the company's CEO, Mr David Morales, handed over video and audio recordings of Mr Assange's meetings with his visitors, including his lawyers. According to El País, in December 2017, the Embassy was refitted with a new surveillance system, allowing the CIA direct access to the recordings.[28] Yahoo News reported that around the same time, top US officials from President Trump's administration, including the then-director of the CIA, Mike Pompeo, were discussing plans to kidnap, poison or even assassinate Mr Assange. These plans were allegedly developed in response to Ecuadorian plans to appoint Mr Assange as an Ecuadorian diplomat in its Embassy in Moscow.[29]

37. As of July 2024, the Spanish investigation into the alleged illegal surveillance of Mr Assange at the Ecuadorian Embassy was still pending. According to media reports, the investigation was being hampered by the US authorities' refusal to respond to requests for judicial assistance. This assistance was allegedly dependent on a US judge concluding his investigation into the alleged involvement of the CIA in spying on the founder of WikiLeaks first.[30]

38. On the day of Mr Assange's exit from the Ecuadorian Embassy, the US unsealed an indictment dated 6 March 2018, charging him with a "federal charge of conspiracy to commit computer intrusion for agreeing to break a password to a classified US government computer".[31] The indictment alleged that Mr Assange had conspired with Ms Manning in helping her crack passwords and release classified information to WikiLeaks. It further stated that "[i]t was part of the conspiracy that Assange encouraged Manning to provide information and records from departments and agencies of the United States".

39. On 23 May 2019, the US Department of Justice announced that a federal grand jury returned a superseding 18-count indictment that included 17 counts under the Espionage Act of 1917. The superseding indictment alleged that Mr Assange conspired with Ms Manning; obtained from her, and aided and abetted her in obtaining classified information with reason to believe that the information was to be used to the injury of the United States or the advantage of a foreign nation; received and attempted to receive classified information having reason to believe that such materials would be obtained, taken, made, and disposed of by a person contrary to law; and aided and abetted Ms Manning in communicating classified documents to Mr Assange.[32] Yet another superseding indictment was returned on 24 June 2020, broadening the scope of the alleged conspiracy. If convicted of all charges, Mr Assange would have faced a penalty of up to 175 years' imprisonment.

40. On 6 June 2019, the United States formally requested the extradition of Mr Assange from the United Kingdom.

41. On 22 September 2019, Mr Assange's prison term for violating bail formally ended. A district judge refused his release, holding that as a person facing extradition, Mr Assange would pose a significant risk of absconding. He continued to be remanded in Belmarsh pending the outcome of his extradition proceedings.

42. Following his incarceration at Belmarsh, Mr Assange was visited by the UN Special Rapporteur on Torture – Mr Nils Melzer – and a medical team. They determined that Mr Assange showed "all the symptoms typical for prolonged exposure to psychological torture" and demanded immediate measures for the protection of his health and dignity.[33] Despite this finding, Mr Assange continued to be held in Belmarsh, essentially in solitary confinement, contributing to the aggravation of his mental state. In a press release dated 1 November 2019, Mr Melzer further criticised the UK authorities, stating: "Despite the medical urgency of my appeal, and the seriousness of the alleged violations, the UK has not undertaken any measures of investigation, prevention and redress required under international law." During the Covid-19 pandemic, his visitation rights were restricted and he was at times confined fully to his cell due to infections on his prison block and, in 2022, contracted the virus himself.

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28. https://english.elpais.com/elpais/2019/09/25/inenglish/1569384196_652151.html#.
29. https://news.yahoo.com/kidnapping-assassination-and-a-london-shoot-out-inside-the-ci-as-secret-war-plans-against-wiki-leaks-090057786.html.
30. https://english.elpais.com/usa/2024-07-29/us-avoids-cooperating-on-investigation-into-spanish-security-company-that-spied-on-assange.html.
31. www.justice.gov/usao-edva/pr/wikileaks-founder-charged-computer-hacking-conspiracy.
32. www.justice.gov/opa/pr/wikileaks-founder-julian-assange-charged-18-count-superseding-indictment.
33. www.ohchr.org/en/press-releases/2019/11/un-expert-torture-sounds-alarm-again-julian-assanges-lifemay-be-risk.

43. On 19 November 2019, the Swedish authorities announced that the investigation into the alleged sexual misconduct in 2010 had been discontinued. Mr Assange has never been charged in relation to the above-mentioned allegations.

44. Following several rounds of appeal, on 20 May 2024, the UK High Court granted Julian Assange leave to appeal against his extradition to the United States. The court acknowledged that there was an arguable case that Mr Assange could be discriminated against in the US because of his Australian nationality. This concern was bolstered by statements from a US prosecutor indicating that the First Amendment to the Constitution of the United States (guaranteeing freedom of speech and expression) might not apply to foreigners in national security matters.[34] The court also granted leave to appeal on the grounds that Mr Assange's extradition could have been incompatible with the right to freedom of expression under the European Convention on Human Rights (ETS No. 5, "the Convention"), considered to have a functional equivalent in the First Amendment.

45. Nevertheless, the UK's courts did not allow Julian Assange to rely on the political nature of his alleged offence as a defence against extradition. Mr Assange has consistently claimed that his extradition would violate the UK-US Extradition Treaty, which bars extradition for some political offences. This treaty was signed in 2003 to strengthen and expedite extradition between the two countries. However, the Extradition Act, introduced into UK law the same year as a reaction to the rise in international terrorism, does not contain a similar provision. The High Court considered that the UK-US Extradition Treaty was not incorporated into domestic law and did not reflect customary international law. Consequently, it did not create personal rights for individuals directly enforceable by the courts.[35]

5. Mr Assange's release and plea agreement

46. Mr Assange was unexpectedly released on bail on 24 June 2024 (after five years and two months in detention in Belmarsh) after agreeing to the terms of a plea deal with the US Department of Justice and immediately left the United Kingdom. He then travelled to Saipan, Northern Mariana Islands (Commonwealth of the United States), where he was scheduled to appear before a federal judge to finalise his plea agreement. On 26 June 2024, Mr Assange pleaded guilty to a single charge under the Espionage Act of 1917 and was sentenced to time served in accordance with the plea agreement. He returned to his native Australia shortly after that, where he reunited with his family.

47. According to the plea agreement, a copy of which was published by the US Department of Justice, Mr Assange pleaded guilty to a charge of "conspiracy to obtain documents, writings, and notes connected with the national defense, and willfully communicate documents relating to the national defense, from a person having both lawful and unauthorised possession of same, in violation of 18 USC [United States Code] paragraph 793(g)". The said provision makes it a crime for two or more people to conspire to violate any other subsection of Section 793. The plea agreement stipulates that Mr Assange conspired with Ms Manning to violate 18 USC paragraphs 793(c)-(e).

48. Section 793(c) makes it a crime for anyone who, "for the purpose of obtaining information respecting the national defense," receives or obtains any document, writing, or note of anything relating to the national defence, knowing or having reason to believe that the materials have been obtained in violation of provisions of the Espionage Act. Section 793(d) makes it a crime for anyone "lawfully having possession" of tangible materials relating to the national defence or information relating to the national defence that the "possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation", to communicate those materials to any person not entitled to receive them or to retain them and fail to deliver them on demand to someone entitled to receive them. Section 793(e) makes it a crime for anyone "having unauthorized possession" of tangible materials relating to the national defence or information pertaining to the national defence that the "possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation," to communicate those materials to any person not entitled to receive them or to retain them.

49. The statement of facts agreed by Mr Assange and US prosecutors claims that Mr Assange knowingly and unlawfully conspired with Ms Manning, to "wilfully and unlawfully obtain, deliver, transmit and communicate documents, writings and notes relating to the national defense, including classified information, to persons not entitled to receive such items and information, including the Defendant [Mr Assange] himself".

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34. www.theguardian.com/media/article/2024/may/20/julian-assange-wins-high-court-victory-in-case-against-extradition-to-us.

35. *Julian Paul Assange v. United States of America* [2024] EWHC 700 (Admin), 26 March 2024, paragraphe 81.

The document further notes that "[t]o encourage Manning to continue to provide United States classified documents that Manning had obtained without authorization and for which Manning did not have authorization to transmit to Defendant and WikiLeaks, the Defendant replied, 'curious eyes never run dry in my experience'". Following a detailed list of all documents disclosed by the WikiLeaks, the plea agreement stated "[s]ome of these raw classified documents were publicly disclosed without removing or redacting all of the personally identifiable information relating to certain individuals who shared sensitive information about their own governments and activities in their countries with the US government in confidence."[36]

50. I should like to reflect further on this last quote. One of the most popular arguments used to justify the disproportionately harsh treatment of Julian Assange and WikiLeaks was that the release of unredacted materials put the lives and safety of individuals at risk. While I agree that any disclosures should be made in such a way as to respect the personal safety of informers, intelligence sources, and secret service personnel, the case of Mr Assange should not be assessed *in abstracto*. Over 13 years have passed since the publication of the unredacted materials, no evidence has been produced showing that WikiLeaks' publications have harmed anyone. The plea agreement itself clearly states that "[a]s of the date of the Plea Agreement, the United States has not identified any victim qualifying for individual restitution and, thus, is not requesting an order of restitution." This essential factor must be considered when assessing the proportionality of measures employed against Mr Assange in response to his (and WikiLeaks') publications. I find it paradoxical that while Mr Assange revealed thousands of actually confirmed and previously unreported deaths at the hands of US and coalition forces in Iraq and Afghanistan, he was the one to be accused of putting multiple lives at risk, without any evidence of that claim being presented.

6. Relevant legal framework

6.1. Espionage Act of 1917

51. The most concerning aspect of the Espionage Act is that it penalises actions regardless of their intentions. It provides for severe punishment of anyone who, lawfully or not, possesses information relating to the national defence or information pertaining to the national defence that the "possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation", and communicates those materials to any person not entitled to receive them or to retain them. It does not distinguish between spies or traitors who disseminate classified information with the intent of harming or weakening their proprietor, and public watchdogs whose purpose is informing the public about public authorities' wrongdoings so as to ensure transparency and accountability.

52. The Espionage Act was enacted by the Congress in 1917. President Woodrow Wilson's administration used it to prosecute thousands of anti-war protesters during and after the First World War. One of the most striking examples of it being used to thwart free speech was the conviction of Eugene Debs. He was sentenced to ten years' imprisonment for his anti-war statements that, in the eyes of the American justice system, allegedly obstructed military recruitment and enlistment. He was released in 1921 after President Harding commuted his sentence.

53. The best-known and most impactful case to be pursued under the Espionage Act (before Julian Assange's prosecution) was the Pentagon Papers case. The Pentagon Papers were a secret 47-volume study commissioned by Secretary of Defence Robert McNamara in 1967, detailing US political and military involvement in Vietnam from 1945 to 1968. Daniel Ellsberg, a former military analyst who had worked on the study, leaked portions of the documents to The New York Times in 1971, which began publishing it shortly after that. The Washington Post also obtained copies and started publishing articles. The administration of President Nixon sought to prevent further publication, citing national security concerns. The Justice Department obtained a temporary restraining order against The New York Times, and the case was referred to the Supreme Court. In a 6-3 decision, the Court ruled that the government had failed to justify prior restraint of publication, citing First Amendment concerns. In that decision, Justice Potter Stewart famously wrote in his concurring opinion that "[i]n the absence of the governmental checks and balances present in other areas of our national life, the only effective restraint upon executive policy and power in the areas of national defence and international affairs may lie in an enlightened citizenry – in an informed and critical public opinion which alone can here protect the values of democratic government. … For without an informed and free press, there cannot be an enlightened people".[37]

36. www.justice.gov/opa/pr/wikileaks-founder-pleads-guilty-and-sentenced-conspiring-obtain-and-disclose-classified.
37. *New York Times Co. v. United States*, 403 US 713 (1971).

54. Despite the publication of the Pentagon Papers being allowed to go forward, Mr Ellsberg was charged with several crimes, including under the Espionage Act. If convicted, he would have faced 115 years' imprisonment. However, due to governmental misconduct (including wiretapping Mr Ellsberg without a court order), the case was dismissed by a judge. Mr Ellsberg later claimed that he had been informed by a prosecutor working on the Watergate scandal that the so-called "White House plumbers"[38] planned to publicly embarrass the whistle-blower by adding LSD to his meal and making him appear incoherent at a media event. His account was confirmed by G. Gordon Liddy (one of the said “plumbers”) in an autobiography.[39]

55. The conviction of Julian Assange marks the first time in the history of the Espionage Act that someone has been convicted of publishing classified information.

6.2. The European Convention on Human Rights

56. The right to freedom of expression, enshrined in Article 10 of the Convention, comprises the right to hold opinions and the right to seek, receive and impart information and ideas of all kinds without interference and regardless of frontiers. As stated by the Committee of Ministers of the Council of Europe in its Recommendation on the protection of journalism and the safety of journalists and other media actors, "[t]he right to freedom of expression and information, as guaranteed by Article 10 of the Convention, constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and the development of every individual. Freedom of expression applies not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any sector of the population. In this way, freedom of expression facilitates robust public debate, another prerequisite of a democratic society characterised by pluralism, tolerance and broadmindedness. Any interference with the right to freedom of expression of journalists and other media actors therefore has societal repercussions as it is also an interference with the right of others to receive information and ideas and an interference with public debate.”[40]

57. An interference with the right to freedom of expression is permitted only if it is prescribed by law, pursues one of the legitimate aims set out in Article 10 paragraph 2 of the Convention, is necessary in a democratic society (corresponds to a pressing social need), and is proportionate to the legitimate aims pursued. These aims are national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, the protection of the reputation or rights of others, preventing the disclosure of information received in confidence and maintaining the authority and impartiality of the judiciary.

58. The European Court of Human Rights has consistently considered the press a "public watchdog" whose role is vital in facilitating and fostering the public's right to receive and impart information and ideas – a critical factor in a democratic society. In the Court's view, this role of a "watchdog" is not limited to the press but can also extend to non-professional journalists, NGOs, academic researchers, bloggers, and other actors contributing to public debate.[41] In its jurisprudence, the Court has accepted that when an NGO draws attention to matters of public interest, it is exercising a public watchdog role of similar importance to that of the press.[42] It has also emphasised that to fulfil its "watchdog" function, the press must be able to disclose facts of public interest, evaluate them, and thereby contribute to the transparency of public authorities.

59. In one of its recent judgments, the Court held that the principles governing the protection of journalists may apply *mutatis mutandis* to the continued detention of human rights defenders, leaders, or activists of relevant organisations when such a detention has been imposed on them in connection with criminal proceedings instituted for offences directly linked to activities concerning the defence of human rights.[43]

60. "Chilling effect" in the context of human rights law refers to the inhibition or discouragement of the legitimate exercise of rights, such as freedom of expression, due to the threat of legal sanction or other negative consequences. The Court has previously considered that certain circumstances that have a chilling effect on freedom of expression, such as charging someone with an offence or detaining him or her on suspicion of committing an offence, interfere with exercising their freedom.[44] It has made the same finding in

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38. A covert White House Special Investigations Unit, established within a week of the publication of the Pentagon Papers to prevent and respond to leaks of classified governmental documents to the press.
39. G. Liddy, *Will: The Autobiography of G. Gordon Liddy*. St. Martin's Press, New York, 1980, pp. 170–171.
40. Recommendation CM/Rec(2016)4 of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors.
41. *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, paragraphs 85-87, 27 June 2017.
42. *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, paragraph 103, ECHR 2013.
43. *Taner Kılıç v. Türkiye (no. 2)*, no. 208/18, paragraph 147, 31 May 2022.

relation to the detention of investigative journalists for almost a year under criminal proceedings brought for very serious crimes.[45] Furthermore, criminal prosecutions of journalists based on criminal complaints and leading to a three-year stay of proceedings, even though the criminal proceedings were lifted after that period in the absence of a conviction, constituted interference because of their dissuasive effect on journalists.[46] The key consideration regarding the chilling effect is that it affects not only the person directly concerned by the authorities' response but creates a climate of self-censorship affecting all journalists, publishers, or others reporting and commenting on the running of the government and on various political issues.

61. In its jurisprudence, the Court accepts that journalists may sometimes face a conflict between the general duty to abide by ordinary criminal law, of which journalists are not absolved, and their professional duty to obtain and disseminate information, thus enabling the media to carry out their essential role as a public watchdog. The concept of responsible journalism requires that whenever a journalist – as well as their employer – has to choose between the two duties, and if they make this choice to the detriment of the duty to abide by ordinary criminal law, the journalist has to be aware that they run the risk of being subject to legal sanctions, including those of a criminal character.[47] Nevertheless, such interference with freedom of expression has to comply with requirements set forth in Article 10 paragraph 2 of the Convention, particularly the proportionality requirement. To this end, the penalty cannot amount to censorship intended to discourage the press from exercising its role as a public watchdog. In some cases, the fact of a person's conviction may be more important than the minor nature of the penalty imposed.[48]

62. As regards the detention with a view to extradition, the Convention, in Article 5 paragraph 1(f), provides that: "everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (f) the lawful arrest or detention of … a person against whom action is being taken with a view to deportation or extradition." According to the European Court of Human Rights, this provision does not require that detention be reasonably considered necessary – for example, to prevent an individual from committing an offence or fleeing. Any deprivation of liberty under the second limb of Article 5 paragraph 1(f) will be justified, however, only for as long as deportation or extradition proceedings are in progress. If such proceedings are not prosecuted with due diligence, the detention will cease to be permissible under Article 5 paragraph 1(f).[49]

63. The deprivation of liberty under Article 5 paragraph 1(f) of the Convention must be "lawful". Where the "lawfulness" of detention is at issue, the Convention refers essentially to national law. It lays down the obligation to conform to substantive and procedural rules under national law. Compliance with national law is not, however, sufficient: Article 5 paragraph 1 requires, in addition, that any deprivation of liberty should be in keeping with the requirement to protect the individual from arbitrariness.[50] It is a fundamental principle that no detention that is arbitrary can be compatible with Article 5 paragraph 1, and the notion of "arbitrariness" in Article 5 paragraph 1 extends beyond lack of conformity with national law so that deprivation of liberty may be lawful in terms of domestic law but still arbitrary, and thus contrary to the Convention.[51] To avoid being branded as arbitrary, detention under Article 5 paragraph 1(f) must be carried out in good faith; it must be closely connected to the ground of detention relied on by the government; the place and conditions of detention should be appropriate; and the length of the detention should not exceed that reasonably required for the purpose pursued.[52] In the case of Julian Assange, the detention conditions at Belmarsh and the length of his detention, in particular, appear to fall short of these requirements.

6.3. Other Council of Europe standards

64. On 13 April 2016, the Committee of Ministers adopted its Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors. The Committee of Ministers noted that legislation and its application in practice can give rise to a chilling effect on freedom of expression and public debate. Interferences that take the form of criminal sanctions have a greater chilling effect than those constituting civil sanctions. Thus, the dominant position of State institutions requires the authorities to show

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44. *Dilipak v. Türkiye*, no. 29680/05, paragraphs 44-47, 15 September 2015.
45. *Nedim Şener v. Türkiye*, no. 38270/11, paragraphs 94-96, 8 July 2014; *Şık v. Türkiye*, no. 53413/11, paragraphs 83-85, 8 July 2014.
46. *Yaşar Kaplan v. Turkey*, no. 56566/00, paragraph 35, 24 January 2006.
47. *Pentikäinen v. Finland*, no. 11882/10, paragraph 110, 20 October 2015.
48. *Stoll v. Switzerland* [GC], no. 69698/01, paragraph 154, 10 December 2007.
49. *A. and Others v. the United Kingdom* [GC], no. 3455/05, paragraph 164, ECHR 2009).
50. *Ibid.*
51. *Saadi v. the United Kingdom* [GC], no. 13229/03, paragraph 67 et seq., ECHR 2008.
52. *Rustamov v. Russia*, no. 11209/10, paragraph 150, 3 July 2012, and *Al Husin v. Bosnia and Herzegovina(no. 2)*, no. 10112/16, paragraph 97, 25 June 2019.

restraint in resorting to criminal proceedings. A chilling effect on freedom of expression can arise not only from any sanction, disproportionate or not, but also from the fear of a sanction, even in the event of an eventual acquittal, considering the likelihood of such fear discouraging one from making similar statements. The Committee of Ministers further observed that actual misuse, abuse, or threatened use of different types of legislation to prevent contributions to public debate, including anti-terrorism and national security laws, can prove effective as a means of intimidating and silencing journalists and other media actors reporting on matters of public interest.

65. The Assembly has played a leading role in promoting the protection of whistle-blowers across Europe. In Resolution 1729 (2010), Resolution 2060 (2015) and Resolution 2300 (2019), as well as Recommendation 1916 (2010), Recommendation 2073 (2015) and Recommendation 2162 (2019), it highlighted the vulnerability and importance of whistle-blowers, urged member States to implement comprehensive measures to protect them, and appealed to the Committee of Ministers to adopt international legal standards to assist with this. The Assembly's commitment to the protection of whistle-blowers has contributed to the Committee of Ministers adopting a recommendation on the protection of whistle-blowers.[53] Similarly, the European Union adopted a Directive,[54] and many member States passed legislation to implement the Directive and relevant Council of Europe standards. In January, the Committee on Legal Affairs and Human Rights has tabled a new motion for a resolution to examine remaining weaknesses of whistle-blower protection in Europe and make proposals based on good practices for improving it.[55]

7. The Assembly's definition of "political prisoner"

66. Assembly Resolution 1900 (2012) establishes the following definition of "political prisoner":

"A person deprived of his or her personal liberty is to be regarded as a "political prisoner":

a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols, in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association;

b. if the detention has been imposed for purely political reasons without connection to any offence;

c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of;

d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or,

e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities."

67. This definition originated in the work conducted in 2001 by the Council of Europe Secretary General's independent experts on cases of political prisoners in Armenia and Azerbaijan, following those countries' commitments upon accession to the Council of Europe to release all political prisoners.[56] It has also been endorsed by the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE) in the 2014 Baku Declaration and is a reference for the work of civil society in many countries. It is important to recall that any form or duration of deprivation of liberty, be it imprisonment following conviction, pre-trial detention, detention with a view to extradition, administrative detention or even house arrest, may be covered by the definition of "political prisoner".

68. In my opinion, the treatment of Julian Assange clearly fulfils several of these criteria. In particular, his indictment under the US Espionage Act for core journalistic activities, such as obtaining and publishing information of high public interest, is a manifestly disproportionate interference with his freedom of expression. I further believe that his prosecution in the United States and resulting lengthy detention in the United Kingdom were motivated by the intention to hide governmental wrongdoings and dissuade others from following Mr Assange's lead. As such, Mr Assange's detention was primarily motivated by considerations of

53. Recommendation CM/Rec(2014)7 on the protection of whistle-blowers, adopted at the 1198th meeting of the Committee of Minister on 30 April 2014.
54. Directive (E.U.) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.
55. Doc. 15919.
56. See "Addendum to the Report of the Independent Experts", SG/Inf (2001)34 Addendum I, 24 October 2001.

political nature. I find it highly concerning that the United Kingdom, a State bound by the European Convention on Human Rights, failed to effectively protect his freedom of expression and bears the brunt of responsibility for his arbitrary detention.

69. Consequently, I believe that Mr Assange should be properly recognised by the Assembly as a political prisoner, having fulfilled several criteria set out in resolution 1900 (2012).

8. Conclusions

70. In 2011, the Assembly adopted resolution 1838 (2011) "Abuse of state secrecy and national security: obstacles to parliamentary and judicial scrutiny of human rights violations". It was a follow-up to its earlier reports which exposed a vast network of CIA's secret prisons and named several European governments which had hosted them or colluded in rendition and torture of prisoners (including Poland, Romania, Lithuania, Germany, Italy, the United Kingdom and North Macedonia). Emphasising the role of whisteblowers, in this case Chelsea Manning, the Assembly welcomed the release by WikiLeaks of diplomatic cables confirming the truth of the allegations of secret detentions and illegal transfers of detainees published by the Assembly in 2006 and 2007.

71. I am deeply worried that the case of Julian Assange is a classic example of "shooting the messenger". WikiLeaks' publications, inspired by Mr Assange's commitment to transparency and accountability, have tremendously impacted public debate. They revealed credible evidence of war crimes having been committed by US and coalition forces in Iraq and Afghanistan, torture and arbitrary detention in the Guantánamo Bay camp, illegal rendition programmes involving Council of Europe member States, unlawful mass surveillance, and many more. Yet, it was the whistle-blower and the publisher who bore the most severe consequences of these revelations. I find it appalling that Mr Assange's prosecution was portrayed as if it was supposed to bring justice to some unnamed victims the existence of whom has never been proven, whereas perpetrators of torture or arbitrary detention enjoy absolute impunity. In my view, this was a deliberate tactic to deflect the attention away from the contents of materials disclosed by WikiLeaks.

72. Publishers and journalists should never become targets of such severe measures when they receive classified information from whistle-blowers. Mr Assange's conviction, although enabled by a plea agreement, sets a dangerous precedent. It opens the door for publishers to be tried under the Espionage Act for publishing materials disclosed by whistle-blowers. Considering what Mr Assange has endured over the last decade and the severe punishment he faced should he be extradited to the US, I understand how compelling the vision of regaining his freedom was and I do not in any way blame him for not continuing to fight against his extradition. I find it alarming that the United States was insisting on his pleading guilty to a charge under the Espionage Act rather than accepting his defence that he was acting as a journalist in the public interest when he published the classified materials.

73. While the plea agreement prevents courts from possibly endorsing the government's most far-reaching argument – that disclosing classified information does not enjoy the First Amendment protection – it still severely undermines media freedom. My most significant concern is not necessarily that publishers will now be prosecuted under the Espionage Act in large numbers, but that Mr Assange's conviction will push them towards self-censorship. I am worried that many important stories will be delayed or not published at all when editors start asking themselves whether they might face the same ordeal Mr Assange has, in retaliation for exposing State secrets. This is especially concerning for small media outlets or independent journalists who do not benefit from legal assistance available to large publishers.

74. My concerns are shared also by experts. During the hearing before the Committee on Legal Affairs and Human Rights, Professor Ní Aoláin stated that Mr Assange's treatment underscored the fragility of protection for human rights across the globe and affirmed the broader point about the exceptionality of process, the abrogation of the general rules, and the normalisation of exceptionality. She referred to a growing trend of misusing measures designed for the prevention and countering of violent extremism (P/CVE) against civil society representatives, lawyers, and journalists. Human rights should be a non-negotiable dimension of every counter-terrorism and national security regulation. Narrow exemptions and carve-outs for national security do not serve our societies well.[57]

57. Hearing of the Committee on Legal Affairs and Human Rights, 25 June 2024: https://youtu.be/1NlVhydTjzk?si=j2ES2W03513gelkR.

75. Ms Vincent agreed that the Espionage Act was an outdated law that has become the focus of growing calls for reform. This is in part because it lacked a public interest defence, which would enable someone accused under this Act to defend their actions as serving the public interest. She emphasised that working with classified information was a regular practice of journalism.

76. A similar concern was shared by Mr Crowther, who said that the message being sent by the United States to publishers and journalists was: "If you receive classified material, if you publish that material, even if there is a clear public interest, you could be next. And it doesn't matter where in the world you are." Although with the plea agreement, the extradition would not take place, a loud message would still have been sent that future publishers could themselves face five years in pre-trial detention and lengthy legal proceedings just as Mr Assange has. Mr Crowther also noted a dangerous precedent being established in a geopolitical context. Namely, if the US could seek the extradition of Mr Assange, why can other States not seek the extradition of publishers and journalists who expose their wrongdoing? There was a growing trend of national security offences being misused, also in a transnational context, to target those who expose State wrongdoing.

77. I find it quite symbolic that Mr Ellsberg, the whistle-blower responsible for the release of the Pentagon Papers, spoke in support of Mr Assange, stating that WikiLeaks had acted in the public interest by publishing information about US actions in Iraq and Afghanistan, similar to how the Pentagon Papers leak revealed information about the Vietnam War.[58]

78. There is no denying that Julian Assange and WikiLeaks helped uncover matters of utmost public interest and strengthened the concept of journalism. While the confidentiality of certain documents should be preserved, especially when their disclosure might entail risks to human lives, I consider the prosecution and conviction of Julian Assange to be manifestly disproportionate and aimed at punishing him for his activities and dissuading others from following in his footsteps. I fundamentally disagree with the premise that encouraging a journalistic source to reveal more information can constitute a criminal offence—such a way of thinking risks undermining the freedom of the media worldwide.

79. While I acknowledge that the complexity of Mr Assange's case, in particular its transnational character, is unprecedented, it is apparent to me that he fell within the Assembly's definition of a political prisoner, in accordance with Resolution 1900 (2012). I believe that the strongest argument in favour of this classification is that the charges under which he was indicted in the United States were manifestly disproportionate in relation to his alleged offence. Julian Assange was carrying out activities that were typical of investigative journalism: he identified sources and incited them to co-operate with him. The fact that he had to spend over five years in detention before even being tried is concerning (to say the least) on its own.

80. The key responsibility for Mr Assange's political prisoner status lies with the United States. It was their sovereign decision to indict him under the Espionage Act and to explicitly state that the government would pursue such a line of argumentation as to deprive Mr Assange of a right to invoke the First Amendment.[59]

81. I regret that the UK's justice system failed to adequately protect Mr Assange from such a treatment. Even considering the complexity of his case, the Covid-19 pandemic that severely impacted the operations of justice systems worldwide, I find it inexcusable that despite the lapse of more than five years, no final decision as to the extradition was rendered. The European Court of Human Rights found a violation of Article 5 paragraph 1(f) of the Convention in a case in which the applicant was detained for over four years, despite its indication of an interim measure under Rule 39 of the Rules of Court, staying the enforcement of the extradition.[60] The fact that Mr Assange had remained in detention should have compelled the UK authorities to conduct the proceedings more expeditiously. Furthermore, prominent journalists, politicians, UN and Council of Europe human rights bodies and non-governmental organisations argued that his detention and prosecution contribute to the creation of a "chilling effect" potentially affecting all journalists. The United Kingdom thus failed to adequately and expeditiously protect Mr Assange's fundamental freedoms under the Convention.

82. Materials published by WikiLeaks demonstrate that even the most democratic governments cannot be trusted to work in the dark, without scrutiny. Where State institutions fail to react adequately to governmental abuse, the role of the press and whistle-blowers becomes crucial. While I am relieved to see Julian Assange hugging his wife and children, finally as a free man, I am worried about the way forward for democracy. The disproportionate treatment he was subjected to will surely affect media freedom around the world, at a time

58. www.theguardian.com/media/2020/sep/16/vietnam-war-leaker-daniel-ellsberg-warns-against-extraditing-assange.
59. https://theconversation.com/julian-assanges-appeal-to-avoid-extradition-will-go-ahead-it-could-be-legally-groundbreaking-227859.
60. *Liu v. Poland*, no. 37610/18, 6 October 2022.

when new conflicts are constantly emerging, transnational repression is increasing and covert operations are conducted on a daily basis. Reversing this trend will pose a significant challenge. For the sake of our own security and liberty, we must insist that the press operates in a secure environment, able to report on matters of public interest, without fear of reprisals. I trust that proposals presented herein, will help pave the way for this to happen.

Appendix – Dissenting opinion presented by Lord Richard Keen (United Kingdom, EC/DA), member of the Committee on Legal Affairs and Human Rights, pursuant to Rule 50.4 of the Rules of Procedure

With respect to the draft report on the case of Julian Assange, I should like to express my dissenting views as indicated during the discussion in committee on 10 September 2024 as follows:

1. General remarks: I regret that the tone used throughout the draft resolution and the explanatory memorandum is overly polemic and imprecise on key legal points. If it is to be taken seriously by the competent authorities, the text should be more factual and less emotional and, above all, legally correct.

2. The "finding" that Mr Assange was a political prisoner whilst in Belmarsh prison is regrettable for two reasons. The first is that it is legally incorrect in that Mr Assange was detained lawfully – he had violated bail conditions before and was therefore considered a flight risk during the judicial proceedings surrounding the extradition request introduced by the United States. These proceedings did indeed take unusually long, but Mr Assange and his legal team contributed to prolonging them himself. His detention was therefore in no way politically motivated as per the criteria of Resolution 1900. The second reason this finding is regrettable is that it belittles the fate of true political prisoners such as Vladimir Kara-Murza and those who are still imprisoned in Russia simply for criticising the war of aggression against Ukraine. The Assembly should stick to its previous practice developed in the reports on "alleged" or "reported" cases of political prisoners in Azerbaijan and Russia and refrain from making unqualified findings of "political prisoner" status except in the most obvious cases, such as those in which the European Court of Human Rights has found a violation of Article 18 of the Convention.

3. For similar reasons, I regret the accusation launched against the UK authorities that Mr Assange was "tortured" in Belmarsh prison. It is incorrect in that Mr Assange was treated in the same way as all other inmates in Belmarsh, which is indeed a high security prison but where torture is not used, to the best of my knowledge. The regrettable psychological state which the UN Special Rapporteur noted who is cited in the draft report was first and foremost the consequence of Mr Assange's self-imposed lengthy isolation in the Ecuadorian embassy in London and cannot be blamed on the UK authorities. Again, calling Mr Assange's treatment "torture" belittles the fact of victims of actual torture, which still occurs in some European countries, as documented in numerous judgments of the European Court of Human Rights and testimony of survivors and whistle-blowers, including ones we heard in our committee.

In view of the above, I have tabled a number of amendments with a view to correct some inaccuracies and tone down some exaggerations and invite colleagues to support them. It is in the interest of the freedoms of information and expression, which I strongly support, that the Assembly's report on the regrettable case of Julian Assange is as accurate and credible as possible.