

Ms. Priti Patel
Home Secretary
The Government of the United Kingdom
Privateoffice.external@homeoffice.gov.uk

Copy sent to:
Ms. Wendy Morton
Parliamentary Under Secretary of State
Minister for European Neighbourhood and
the Americas
psministemortonaction@fco.gov.uk

Brussels, 24 February 2020

CCBE Letter regarding the interception of communications between Julian Assange and his lawyers

Dear Ms. Patel,

The Council of Bar and Law Societies of Europe (CCBE) represents the bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE is recognised as the voice of European lawyers, representing European Bars and Law Societies in their common interests before European and other international institutions.

The CCBE has taken notice of the criminal proceedings undertaken in Spain against David Morales Guillén, inter alia for crimes which have allegedly been facilitated as a result of surveillance undertaken, at his direction, lawyer-client communications in relation to Julian Paul Assange during his stay in the embassy of Ecuador.

Mr. Morales was the CEO of the security company UC Global which was commissioned to provide security at the embassy of Ecuador in London, in which Mr. Assange was resident, having been granted political asylum.

There is substantial evidence that, whilst he was resident in the embassy, Mr. Assange was subjected to constant surveillance by means of security cameras, and also by means of microphones which had been secretly and illegally installed by UC Global. Video and audio material proving such surveillance has been made available to journalists and has been published in several newspapers and TV channels. This surveillance included conversations between Mr. Assange and his lawyers. This constitutes an egregious breach of Mr. Assange's rights, under Spanish and Ecuadorian Law to maintain the secrecy of his communications and discussions with his lawyers and, under English and US law, to assert Legal Professional Privilege in connection with those communications and discussions

There is further substantial evidence that UC Global has transmitted this illegally produced material – including conversations between Mr. Assange and his lawyers – to an actor or actors associated with the intelligence community in the United States.

Details of these allegations are to be found here:

- https://elpais.com/elpais/2019/11/08/inenglish/1573211318_746915.html
- https://elpais.com/elpais/2019/10/23/inenglish/1571817241_796975.html
- https://www.theregister.co.uk/2019/12/02/spain_to_interview_assange_on_spy_claims/
- <https://www.nytimes.com/2019/12/01/world/europe/assange-spying-embassy-Ecuador.html>
- <https://www.nytimes.com/2019/05/23/us/politics/assange-indictment.html>

In this context, the CCBE draws attention to the [CCBE Recommendations on the protection of client confidentiality within the context of surveillance activities](#), which sets out a number of standards that must be upheld in order to ensure that the fundamental rights of professional secrecy and legal professional privilege are not undermined by practices undertaken by the state involving the interception of communications and access to lawyers' data for the purpose of surveillance and/or law enforcement.

One particular aspect which the CCBE would wish to highlight is that most legal systems share a common understanding that, if the right of the citizen to safeguard the confidentiality of legal communications, which is to say, the right of the citizen to be protected against any divulging of his/her communications with his/her lawyer, were to be denied, people may be denied access to legal advice and to justice. Professional secrecy and legal professional privilege are thus seen as instruments by which access to justice and the maintenance of the rule of law can be guaranteed.

In view of these facts and the ongoing proceedings against Mr. Assange before the courts of the United Kingdom seeking his extradition to the USA, the CCBE expresses its deep concern. It takes the following position:

- According to the jurisprudence of the European Court of Human Rights, material which is potentially covered by professional secrecy enjoys the heightened protection of article 8 of the European Convention on Human Rights. Additionally, lawyer-client communications in relation to contentious proceedings (whether criminal or civil) also enjoy protection under Article 6 ECHR concerning the right to a fair trial. Article 6 rights (unlike article 8 rights) are absolute in the sense that limitations or derogations cannot be applied (see pages 13-16 CCBE recommendations). In particular, though considerations of national security might fall to be balanced against the right to confidentiality under article 8, the right to a fair trial (of which Professional Secrecy and Legal Professional Privilege is an essential component) under article 6 is an absolute right, and prevails against all other considerations, including considerations of national security.
- Any intercepted material obtained without judicial authorisation and in violation with of the principle of professional secrecy or legal professional privilege should be ruled inadmissible in a court of law and be required to be destroyed.
- All government authorities which have been found to have been undertaking unlawful surveillance activities should be made liable to having sanctions imposed upon them.
- There is serious concern that the illegal recordings of communication between Mr. Assange and his lawyers which were obtained in manner referred to above and which may be in the possession of the security services in the United States may be – openly or secretly – used in the criminal proceedings against Mr. Assange in the event that he is extradited to the USA.
- In these circumstances, and in the consequent absence of any confidence that the information obtained by the unlawful surveillance of Mr. Assange's communications

with his lawyers will not be used either in any trial of Mr. Assange, or to inform the decisions and actions of the US prosecuting authorities (even if not overtly relied upon as evidence in the trial), the extradition of Mr. Assange to the USA would inevitably lead to a serious infraction of his fundamental human right to a fair trial.

The CCBE welcomes the concern already expressed by Her Majesty's Government (HMG) for the maintenance of the Human Rights of accused persons in that HMG has already sought and received assurances from the Government of the United States that, if extradited, Mr. Assange will not face the death penalty, and would encourage HMG to maintain its commitment to human rights and the rule of law by seeking similar assurances that, were Mr. Assange to be extradited, no use would be made of any material obtained through the unlawful surveillance of legally privileged communications between Mr. Assange and his lawyers.

The CCBE would observe that such assurances would need to extend beyond an assurance that such material would not be presented to the court in the form of evidence to include also an assurance that knowledge of such communications (or, in any wise, knowledge of the content of such communications) would not be made available to the prosecutors in any such trial.

The CCBE would further observe that if such evidence were presented to the Court or such information become known to prosecutors, there would be an irremediable breach of Mr. Assange's fundamental right to a fair trial under article 6 of the European Convention on Human Rights and, to due process under the US Constitution.

Yours faithfully,



Ranko Pelicarić
CCBE President