



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

ACTION NO. G-CL 4/22

IN THE MATTER OF PETER KARAM – THE DEFENDANT

**IN THE MATTER OF AN APPLICATION FOR A HEARING BY VIDEO CONFERENCING
BY THE ATTORNEY GENERAL ON BEHALF OF THE FEDERAL COURT IN CRIMINAL
AND CORRECTIONAL MATTERS, NUMBER 11, BUENOS AIRES, ARGENTINE
REPUBLIC UNDER SECTION 5(1) OF THE EVIDENCE (PROCEEDINGS IN OTHER
JURISDICTIONS) (TURKS AND CAICOS ISLANDS) ORDER**

WRITTEN REASONS

Before: The Hon. Mr. Justice Anthony S. Gruchot

Appearances: Mrs. Shayone Handfield-Gardiner for the Attorney General

Hearing Date: 21 October 2022

Venue: Court 5, Graceway Plaza, Providenciales

Handed Down: 8 November 2022 at 2:00 p.m. by email



The Application

1. This was an application by way of letters rogatory dated 3 October 2022¹ from the Judge in charge of the Federal Criminal and Correctional Court, No. 11, Secretary 21, Buenos Aires, Argentine Republic in case number 17.459/2018 pursuant to a Letter of Request for judicial co-operation dated 14 October 2022 from the Embassy of the Argentine Republic ('the Request') to ensure the participation of the Defendant at a hearing to take place on Monday 24 October 2022 at 12:00 p.m. (U.T.C. -3) by video conferencing.

¹ Being an extension of letters rogatory of 11 February 2019, 12 July 2019 and 13 November 2020 with respect to the extradition of the Defendant.

2. The application was brought before the Court by way of *ex-parte* Originating Summons filed on 18 October 2022 by the Honourable Attorney General seeking the following relief:
 - a. That the Defendant attend at the Supreme Court, Providenciales, to be examined orally, by way of video-conferencing, at a hearing to be held before the Federal Criminal and Correctional Court, Number 11, Buenos Aries, Argentine Republic on the 24th Day of October 2022 at 12:00 noon (UTC) being 8:00 a.m. (local time)².
 - b. The Attorney General be at liberty to apply for such other orders as may from time to time be necessary with regard to this matter.
3. The application was supported by an affidavit sworn on 17 October 2022 by Clemar Hippolyte, Principal Crown Counsel and which was filed with the Originating Summons.
4. The requested measures set out in the Request for assistance were:
 - a. To provide assistance and take the necessary steps in order to carry out the hearing fixed for Monday, 24 October 2022 at 12:00 p.m. (UTC -3) by video conferencing for the defendant, Peter Michael KARAM to answer formal questioning (according to the terms and conditions set forth in Section 294 of the Argentine Procedure Criminal Code).
 - b. To take all the necessary steps in order to guarantee the Peter Michael KARAM be present in the video conference.
 - c. To provide the necessary elements to perform this act (communication devices and connection to the 'Internet' network).
5. The legal framework for such a request is provided for pursuant to The Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order 1987 ('the 1987 Order') which extends sections 1 to 10 of, and schedule 2 to, the Evidence (Proceedings in Other Jurisdictions) Act 1975³ to the Turks and Caicos Islands.
6. Of effect to the application are the following provisions of the 1987 Order:

"Application to Supreme Court for assistance in obtaining evidence for civil proceedings in other court

1. Where an application is made to the Supreme Court for an order for evidence to be obtained in the Turks and Caicos Islands, and the Court is satisfied–

(a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal ("the requesting court") exercising

² It became apparent that the time difference calculation was wrong. Argentina time being U.T.C. -3, Turks and Caicos Islands time being U.T.C. -4.

³ Of England and Wales

jurisdiction in a country or territory outside the Turks and Caicos Islands;
and

(b) that the evidence to which the application relates is to be obtained for the purposes of civil proceedings which either have been instituted before the requesting court or whose institution before that court is contemplated,

the Supreme Court shall have the powers conferred on it by the following provisions of this Act.

Power of Supreme Court to give effect to application for assistance

2. (1) Subject to the provisions of this section, the Supreme Court shall have power, on any such application as is mentioned in section 1 above, by order to make such provision for obtaining evidence in the Turks and Caicos Islands as may appear to the court to be appropriate for the purpose of giving effect to the request in pursuance of which the application is made; and any such order may require a person specified therein to take such steps as the court may consider appropriate for that purpose.

(2) Without prejudice to the generality of subsection (1) above but subject to the provisions of this section, an order under this section may, in particular, make provision–

(a) for the examination of witnesses, either orally or in writing;

...

(3) An order under this section shall not require any particular steps to be taken unless they are steps which can be required to be taken by way of obtaining evidence for the purposes of civil proceedings in the court making the order (whether or not proceedings of the same description as those to which the application for the order relates); but this subsection shall not preclude the making of an order requiring a person to give testimony (either orally or in writing) otherwise than on oath where this is asked for by the requesting court.

Privileges of witnesses

3. (1) A person shall not be compelled by virtue of an order under section 2 above to give any evidence which he could not be compelled to give–

(a) in civil proceedings in the Turks and Caicos Islands; or

(b) subject to subsection (2) below, in civil proceedings in the country or territory in which the requesting court exercises jurisdiction.

(2) Subsection (1)(b) above shall not apply unless the claim of the person in question to be exempt from giving the evidence is either-

(a) supported by a statement contained in the request (whether it is so supported unconditionally or subject to conditions that are fulfilled); or

(b) conceded by the applicant for the order, and where such a claim made by any person is not supported or conceded as aforesaid, he may (subject to the other provisions of this section) be required to give the evidence to which the claim relates but that evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

EVIDENCE FOR CRIMINAL PROCEEDINGS

Power of Supreme Court to assist in obtaining evidence for criminal proceedings in overseas courts

5. (1) The provisions of sections 1 to 3 above shall have effect in relation to the obtaining of evidence for the purposes of criminal proceedings as they have effect in relation to the obtaining of evidence for the purposes of civil proceedings except that--

(a) paragraph (a) of section 1 above shall apply only to a court or tribunal exercising jurisdiction in a country or territory outside the Turks and Caicos Islands;

(b) paragraph (b) of that section shall apply only to proceedings which have been instituted; and

(c) no order under section 2 above shall make provision otherwise than for the examination of witnesses, either orally or in writing, or for the production of documents.

(2) In its application by virtue of subsection (1) above, section 3(1)(a) and (b) above shall have effect as if for the words "civil proceedings" there were substituted the words "criminal proceedings".

(3) Nothing in this section applies in the case of criminal proceedings of a political character."

7. It is therefore apparent that it was open for the Argentine court to request the Court's assistance in criminal proceedings before that court and the Court may:

- a. make provisions for the obtaining evidence in the Turks and Caicos Islands;
 - b. direct persons to take such steps as the Court may consider appropriate for the obtaining of that evidence;
8. The Court was concerned that what was being requested was not the examination of witnesses, but the examination of a defendant in the Argentine proceedings. Further, the request was not just to make provision for examining the defendant, but also contained a request to guarantee Mr. Karam's attendance and that in respect of that request, the Court was being asked to compel Mr Karam's attendance, in effect being asked to subpoena Mr. Karam.
9. The Request contained the wording "***guarantee*** that Peter Michael KARAM be present". The Originating Summons was seeking an order "***that*** the Defendant appear...". The draft order which was sought was that "*The Defendant ***attend*** the Supreme Court, Providenciales to be examined orally...*". All mandatory in nature and additionally, the draft order was endorsed with a penal notice. (My emphasis).
10. It appeared to the Court that that the provisions of the 1987 Order did not go so far as to compel the attendance of a witness, let alone a defendant, but provided that that the Court had a power only to make provision for the examination of witnesses and to make such orders against such persons as may be appropriate to ensure that provisions for such examination are provided.
11. The Court was aware that a certain agreement had been made between the Argentine Authorities and Mr. Karam which had led the withdrawal of extradition proceedings against him and to the Governor's Order of 16 June 2021. This agreement was referred to in the Letters Rogatory as "*Mr. Karam having subscribed to a written commitment on 10 May 2021.*" The Court was unaware of the terms of this agreement / commitment.
12. Ms. Handfield-Gardiner advised that the Attorney-General was not aware of the terms of any agreement, nor was she able to advise the Court if there were provisions within the Argentine Criminal Procedure Code which could compel a defendant
 - a. to give evidence in his own cause; or
 - b. to give evidence that may incriminate himself.
13. The Request cited section 294 of the Argentine Criminal Procedure Code which provides:

"When sufficient reason to suspect that a person has participated in the commission of a crime, the judge shall proceed to interrogate him/her; if the person be detained, immediately or not later than 24 hours after he/she was taken into custody."

14. I take the view that the above had 2 effects on the application. Firstly, it confirmed that the Argentine Court could question (or interrogate) the Defendant and secondly, that it was intended the Court compel Mr. Karam's attendance for such purpose.
15. This in my view conflicts with the provisions of the 1987 Order to the extent of the following:
 - a. section 2(2)(a)⁴ applies to witnesses and not a defendant; and
 - b. section 3 provides that a person shall not be compelled to give evidence which he could not be compelled to give in the Turks and Caicos Islands. Mr Karam could not be compelled in the Turks and Caicos Islands to give evidence.
16. Ms Handfield-Gardiner advised that Mr. Karam had the benefit of both Turks and Caicos Islands and Argentine attorneys and notwithstanding the application had been brought *ex-parte*, he was aware of, and of the nature, the proposed [Argentine] hearing and had agreed to attend voluntarily.
17. In light of the above, I did not have to consider further whether the Court had the power in respect of the matters above which gave rise to concerns and the apparent conflict between the terms of the Request and the extent of the Court's powers and I ordered that the Registrar make facilities available to the Argentine court to accommodate the appearance of the Defendant (and his attorneys) at the proposed hearing.
18. I agreed to the request by Ms. Handfield-Gardiner to provide these brief written reasons for the purposes of guidance / consideration for future applications.

9th November 2022

**The Hon. Justice Anthony S. Gruchot
Judge**



⁴ As modified by section 5 with respect to criminal proceedings