

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. <sup>146</sup> OF 1997

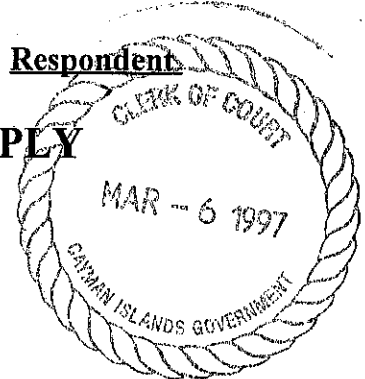
BETWEEN: PETER KRUGER

Applicant

AND: HIS EXCELLENCY THE GOVERNOR

Respondent

**APPLICATION FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW**



To the Clerk of the Court, Law Courts, George Town, Grand Cayman.

Name, address and description of applicant(s)

Peter Kruger  
C/o H.M. Northward Prison  
Grand Cayman

Judgement, order, decision or other proceeding  
in respect of which relief is sought

The decision of His Excellency the  
Governor to issue an Authority to  
Proceed under the Extradition Act 1989  
on 3rd March 1997

**Relief Sought**

- 1 Certiorari, quashing the Authority to Proceed.
- 2 Costs.
- 3 Such other relief as the Court shall see fit.

Name and address of Applicant's attorneys,  
or, if no attorneys acting, the address for  
service of the Applicant

Bruce Campbell & Co  
4th Floor  
Bank of Nova Scotia Building  
George Town  
Grand Cayman

Attorneys-at-Law for the Applicant

Signed:

Dated: 5th March 1997

## Grounds on Which Relief Sought

### *Ultra vires*

- 1 The European Convention on Extradition (Dependent Territories) Order 1996 (S.I. 1996 No 2875) is ultra vires. The European Convention on Extradition, contained in Schedule 1 to the European Convention on Extradition Order 1990 (SI 1996 No 1507), contains the basic contractual obligation to extradite, "Subject to the provisions and conditions laid down in this Convention".
- 2 Article 27. 1 of the Convention states "This Convention shall apply to the metropolitan territories of the Contracting Parties". Article 27.4 states, "By direct arrangement between two or more Contracting Parties, the application of this Convention may be extended, subject to the conditions laid down in the arrangement, to any territory of such parties..."
- 3 The United Kingdom has accepted this limitation by acceding to the Convention. Under Schedule 4 to the 1990 Order the United Kingdom has registered an indication that it will notify the Secretary-General of the application of the Convention to any territory. It does not purport to assert that the United Kingdom is not bound by Article 27.4; only that it will notify of such extensions as are permitted by Article 27.
- 4 There is no "arrangement" of the kind specified in Article 27 with the Government of Switzerland; nor could there be. Switzerland has no territories outside its boundaries. An agreement of that kind would have to be embodied in an Order in Council under the provisions of, for example, section 4 (1) of the 1989 Act.

### *Irrationality.*

- 5 The Governor has taken a decision under a power conferred by statute, namely, section 30 (3) and 7 (4) of the 1989 Act.
- 6 No reasonable Governor could have issued an Order to Proceed against the history of the case as set out in the attached affidavit of Peter Kruger. It is not in itself unlawful for second requests to be presented on the same facts. There may be occasions where the failure of the first request was due to circumstances beyond the control of the requesting state (In Re Rees [1986] A.C. 937 (difficulties in obtaining evidence from a third state) ; or where a minor error, such as a missing link in a chain of continuity has occurred, but for which the first request would have succeeded. More than one order to proceed can be issued on foot of the same request even where a fugitive has been discharged (US Government v. Bowe [1989] 3 All E.R. 315 (various procedural difficulties) .
- 7 However, it is submitted that it is wholly wrong and irrational to grant a second order to proceed in circumstances where;

(A) The requesting state, through counsel, has repeatedly misled the courts of the Cayman Islands, recklessly or incompetently, as to the strength of its case, so that the defendant was remanded in prison for over 6 months, and his wife for nearly three months;

(B) It is apparently now accepted by the Government of Switzerland that there was no case at all against Barbara Kruger;

(C) The requesting state has not sought to appeal, and has thus conceded that its previous assurances of the strength of the case were wrong.

(D) Instead of seeking to present its evidence again in proper form so that sufficiency of evidence might be assessed, the requesting state deliberately waited until the extension of the provisions of the European Convention on Extradition before presenting what it concedes is simply a "rehash" of its case, but with the addition of material apparently illegally obtained.

(E) The evidence presented by the requesting state on the first occasion manifestly failed to provide a case to answer, and it appears that the Government of Switzerland has done little to correct or improve it.

(F) The requesting state, without lawful justification, procures the issuing of a provisional warrant and withholds highly relevant material from the magistrate when seeking to deprive the Applicant of his liberty.

- 8 No reasonable Governor would have issued an Authority to Proceed in these circumstances without taking advice from a lawyer other than the Attorney-General. The Attorney-General is advising and representing the Government of Switzerland. It is submitted that the Governor cannot have taken such independent advice because he issued an Authority to Proceed one working day after receiving the Emergency Representations submitted on behalf of the Applicant.
- 9 No reasonable Governor would have failed to give the Applicant a longer opportunity to present reasons why an Authority to proceed should not be issued; and an opportunity to seek to quash the issue of the provisional warrant of arrest on the ground that the case was not urgent.

3 Raymond Buildings  
Gray's Inn  
London WC1

5<sup>th</sup> March 1997.

Alun Jones QC

