

THE RIGHT TO LIFE, LIBERTY AND SECURITY AND THE PRINCIPLES OF FUNDAMENTAL JUSTICE

Charkaoui v. Canada (Citizenship and Immigration) Supreme Court of Canada (2007)

FACTS

In 2001, Parliament adopted a new immigration law giving the federal government the power to issue “security certificates” against non-citizens living legally in Canada.

The certificates allowed authorities to arrest and detain someone without laying charges if the government thought the person was a threat to national security. The certificate was reviewed by a judge, who had to decide if it was “reasonable”. The government could request that this review hearing be held behind closed doors so neither the public nor the prisoner could see any sensitive national security evidence used to issue the security certificate. If the judge found that the certificate was reasonable, the person could be deported to another country, even one where he or she might face torture.

Between 2001 and 2003, security certificates were issued against Adil Charkaoui, Hassan Almrei and Mohamed Harkat, and they were detained. The government claimed they were involved in terrorism and posed threats to Canada’s security. They spent three to five years in prison without being charged or having a public hearing or trial. They were never told the basis of the case against them.

In 2006, they brought a case challenging their detentions under Section 7 of the Canadian Charter.

QUESTIONS

1. Does the security certificate procedure violate Section 7 of the Canadian Charter?

Section 7 states that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

1. If the procedure does violate Section 7, is this violation justified under Section 1 of the Canadian Charter?



EXPLANATIONS

The Principles of Fundamental Justice

The principles of fundamental justice include, among other things, the right to a fair hearing. For a hearing to be considered fair, the following four criteria must be met:

- The hearing must take place before an independent and impartial judge.
- The decision must be based on all the relevant facts and the law.
- The accused must know the evidence used against him or her.
- The accused must have a chance to defend himself or herself against the accusations.

PREPARATION FOR PLEADINGS

Lawyers for the Detainees (appellants)

The lawyers for Charkaoui, Almrei and Harkat must show the following:

- The automatic detention under the security certificate process violates their right to liberty and security. Ask yourself these questions:
 - ⇒ How was the right to liberty of the detainees violated?
 - ⇒ How was the security of the detainees jeopardized?
- The principles of fundamental justice were not respected because the detainees were deprived of the right to a fair hearing. For help with this argument, see the explanations above. You can also ask yourself these questions:
 - ⇒ If the detainees aren't allowed to attend the hearing, the judge only hears the government's arguments. Can the judge really be impartial in these circumstances?
 - ⇒ If the detainees are not allowed to see the government's evidence, do they have a genuine chance to defend themselves against the accusations against them?
 - ⇒ Is the judge really making a decision based on all the relevant facts?

- These violations were not justified under Section 1 of the Canadian Charter.

The lawyers for the government will use the Section 1 test to defend their position. You have to know how to respond to their arguments. Ask yourself these questions:

- ⇒ Can such serious violations of fundamental rights be justified by national security concerns?
- ⇒ Is the deportation of a person to a country where he or she might face torture justified in a free and democratic society?

Don't forget to anticipate the arguments of the other side!

Lawyers for the Government (respondent)

The lawyers for the government must show the following:

- The detainees were deprived of the right to liberty and security, but this was done in accordance with the principles of fundamental justice. In other words, the detainees received a fair hearing. Ask yourself these questions:
 - ⇒ Is it acceptable that the detainees were denied the right to attend the hearing?
 - ⇒ Why does the government issue security certificates?
 - ⇒ Is terrorism more of a threat to national security than other types of crimes?
 - ⇒ Isn't the role of a judge to take into account the interests of all the parties, whether or not they are present at the hearing?
- If the detainees' rights were violated, this was justified under Section 1 of the Canadian Charter. Apply the Section 1 test by asking yourself these questions:
 - ⇒ Can such serious violations of fundamental rights be justified by national security concerns?
 - ⇒ Is the deportation of a person to a country where he or she might face torture justified in a free and democratic society?

Don't forget to anticipate the arguments of the lawyers on the other side, as well as their responses to your arguments. Remember that they have a right to respond.