BGE 20000525_28256_95 vom 25. Mai 2000

Bundesgericht (BGE), 2000-05-25, FR

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Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 5 par. 2 et 4 CEDH. Droit d'être informé sur les motifs de son arrestation et de consulter le dossier. Egalité des armes entre la requérante et le Ministère public de la Confédération. Lors de son arrestation, la requérante a pris connaissance du mandat d'arrêt contenant les charges principales retenues contre elle. Par la suite, lorsqu'elle fut interrogée par le Ministère public et accusée, l'intéressée a pu lire les documents l'incriminant; la Chambre d'accusation du Tribunal fédéral a confirmé que cela n'avait pas été contesté par l'accusée. Pour le surplus, celle-ci n'a pas démontré qu'il y ait d'autres pièces dont la non-communication l'ait empêchée de contester la légalité de sa détention; il en découle que la requérante a été suffisamment informée des motifs de son arrestation. Conclusion: requête déclarée irrecevable. DÉCISION D'IRRECEVABILITÉ de la CourEDH: SUISSE: Art. 5 par. 4 et 13 CEDH. Recours effectif contre la décision de la Chambre d'accusation du Tribunal fédéral. S'agissant des moyens de droit en matière de détention, l'art. 5 par. 4 CEDH est une lex specialis par rapport à l'art. 13 CEDH dont les exigences sont moins strictes. En l'espèce, la décision ordonnant la détention préventive de la requérante a été rendue par un tribunal dans une procédure contradictoire; le contrôle judiciaire était dès lors incorporé dans cette décision et aucun moyen de droit supplémentaire n'était requis par l'art. 5 par. 4 CEDH. Quoi qu'il en soit, le droit de recourir en matière de détention n'est pas garanti en tant que tel par la Convention, et l'art. 13 CEDH ne peut être invoqué dans le cas où la violation alléguée est de la compétence d'un tribunal. Conclusion: requête déclarée irrecevable.

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Erwägungen

E. 1

Under Article 5 §§ 2 and 4 of the Convention the applicant complains that she was not duly informed of the grounds of her detention and the accusations against her. In particular, she was not granted sufficient access to the case-file. For instance, she had not been shown the documents of the East German State security authorities when replying on 11 November 1994 to the observations of the Federal Attorney's Office. The applicant submits that it did not transpire from any of the documents shown to her that there was a serious suspicion that she had participated in the attacks mentioned. She was only suspected of belonging to the Carlos group and of having transmitted the letter to the French Embassy in The Hague. She was equally not shown any documents in her favour. By limiting her access to the case-file she was deprived of the possibility of contesting her detention. There had been no equality of arms between the applicant and the Federal Attorney's office.

E. 2

The applicant complains that her request for release was not decided speedily within the meaning of Article 5 § 4 of the Convention. Thus, her request was decided by the Federal Court as the sole judicial instance only after 33 days.

E. 3

Under Article 13 of the Convention the applicant complains that there had been no effective remedy at her disposal to complain of a decision of the Indictment Chamber of the Federal

Court. Erwägungen THE LAW 1. The applicant complains under Article 5 §§ 2 and 4 of the Convention that she was not duly informed of the grounds of her detention and the accusations against her. In particular, she was not granted sufficient access to the case-file. As a result, there was no equality of arms between her and the Federal Attorney's office. Article 5 §§ 2 and 4 reads: "2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. ...

E. 4

Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful." The Government submit that the applicant obtained the required information upon her arrest on 19 September and then again by the Federal Attorney on 20 September 1994 at 17h15. She was, therefore, informed "promptly" within the meaning of Article 5 § 2 of the Convention. Moreover, the Government do not contest that, in the proceedings before the Federal Attorney, the applicant and her lawyer did not have full access to the Federal Attorney's file. This transpires from the Federal Attorney's observations of 7 November 1994 where it was expressly stated that the case-file was not to be consulted by the defence. The Federal Court confirmed in its decision of 23 November 1994 that the applicant had not been able to consult the entire file. However, such limited consultation of the case-file does not automatically breach the rights under Article 5 § 4 of the Convention. In the present case, certain documents, concerning terrorism, were confidential, and the Federal Court was called upon to protect the sources of the information obtained. The Government contend that in fact the applicant was able to defend herself in the proceedings before the Federal Court against the refusal of the Federal Attorney to release her from detention. She was aware of all the essential elements which could have decisively influenced the question whether or not to maintain her detention on remand. The principle of equality of arms was complied with, since the Federal Court, which was in possession of the Federal Attorney's entire case-file, only relied on documents which were also known to the applicant. Precisely because the applicant had not had access to confidential documents and the Federal Court had assured their confidentiality, it also cannot be assumed that the Federal Attorney withheld certain documents from the Federal Court. The applicant replies that the Indictment Chamber was not in a position to decide which files were, or were not, relevant for the applicant, since it did not know which arguments the defence would present with respect to the documents withheld. It is not disputed that the Federal Attorney wished to keep certain documents confidential; however, they should not then be transmitted to the court reviewing the detention. Yet if the Federal Attorney issued a statement to the court concerning the legality of detention, then the other side had to be given the right to comment thereupon. Otherwise, the applicant would have no possibility to refute incriminating evidence or to examine exonerating evidence in secret files. It cannot therefore be said that the applicant could defend herself properly. In any event, if the Federal Court only examined those files of which the applicant was aware, then why did the Federal Attorney transmit other files to the Federal Court- In the applicant's submissions, if it is said that she had at least been aware of the essential elements of the case-file, this remains a mere claim which the Government are not able to prove. The information disclosed to the applicant did not indicate what it was that led the investigating authorities to conclude that a grave suspicion existed with regard to the attacks mentioned in the

warrant of arrest. If it is alleged that the applicant delivered a threatening letter to the French Embassy in The Hague, this does not in itself say anything about the perpetrators of any attacks that subsequently took place. Finally, since the Federal Court's decision of 23 November 1994 is as such disputed, it cannot be adduced to establish compliance with Article 5 § 4 of the Convention. According to the Convention organs' case-law, the right to an adversarial trial in a criminal case means that both prosecution and defence must be given the opportunity to have knowledge of and comment upon the observations filed and the evidence adduced by the other party. It should be insured that the other party will be aware that observations have been filed and will get a real opportunity to comment thereupon (see the Lamy v. Belgium judgment of 30 March 1989, Series A no. 151, pp. 16-17, § 29). The Court notes that upon her arrest on 19 September 1994, the applicant was shown the warrant of arrest which listed the main charges brought against her. Subsequently, when the applicant was questioned by the Federal Attorney's office and accusations were brought against her, it transpires from the observations of the Federal Attorney of 7 November 1994 that she was shown and able to read the respective incriminating documents. As the Indictment Chamber later confirmed in its decision of 23 November 1994, this was not contested by the applicant in her reply of 11 November 1994. The applicant has furthermore not demonstrated that, in addition, there were further documents the non-communication of which would have prevented her from challenging the lawfulness of her detention. The Court concludes that an examination of this part of the application does not disclose that the applicant had not sufficiently been informed of the essential legal and factual grounds for her arrest, thereby preventing her from questioning the lawfulness of her detention. It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of the Convention. 2. The applicant complains that her request for release was decided only after 33 days, and therefore not speedily within the meaning of Article 5 § 4 of the Convention. The Government submit that the duration of the proceedings complied with the requirements under Article 5 § 4 of the Convention. The proceedings lasted from 24 October until 24 November 1994, though the five days from 26 to 31 October, which the applicant let pass by, must be deducted. As a result, the period to be examined under Article 5 § 4 of the Convention, lasted 26 days. The proceedings could not have been conducted within a shorter time-limit. To begin with, Swiss law provides for the decision of an administrative authority preceding the judicial examination of detention. Moreover, the accused has an absolute right to reply, regardless of whether use is made of this right. Such a right necessarily prolongs the proceedings, though in the present case the Federal Court kept the time-limit to the strict minimum of three days. The Government further point out that at that stage investigations were still going on and the Federal Court had no knowledge of the case-file before the applicant filed her complaint on 31 October 1994. The Federal Court also had to consider the applicant's request for release from detention. Matters were complicated by the fact that on 21 October 1994 an additional complaint was filed by another applicant whose Application no. 27426/95 is currently pending before the Court. Both cases raised to a large extent the same issues, and parallel proceedings were, therefore, conducted. The present case was decided two days after the other one. Finally, the applicant was served the reasons of the Federal Court's decision, numbering 11 pages, the day after the decision was given. The applicant replies that the period to be examined under Article 5 § 4 of the Convention commenced on 21 October 1994. Moreover, the period of five days after 26 October 1994 cannot be deducted from the

total length, since the applicant's lawyer, upon receiving a copy of the Federal Attorney's decision, promptly filed her complaint on Monday, 31 October. The period ended on 23 November 1994, when the Federal Court gave its decision, rather than 24 November as submitted by the Government. In the applicant's opinion, the administrative proceedings preceding the decision of the Federal Court do not conflict with the requirements of Article 5 § 4 of the Convention. However, such two-stage proceedings must not lead to an excessive prolongation of the proceedings. On the other hand, it cannot be said that the issue of the applicant's release from detention was complex; indeed, the Federal Court was able to reply to her request for release in a brief and simple response on 23 November 1994. If the Federal Court was faced with a second complaint concerning consultation of the case-file, the two issues could have been dealt with separately. In any event, as the Government themselves point out, the two cases raised more or less the same issues. Having noted the arguments of the parties in relation to the complaint, the Court considers that this part of the application raises complex issues of law and fact under the Convention which should be determined by an examination of the merits. This part of the application cannot, therefore, be rejected as being manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. 3. Under Article 13 of the Convention the applicant complains that there is no effective remedy to complain of a decision of the Indictment Chamber of the Federal Court. Article 13 of the Convention states: "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity." The Court considers that, as regards legal remedies in matters of detention, Article 5 § 4 is the lex specialis and Article 13 the lex generalis . It is therefore sufficient to examine the present case from the angle of Article 5 § 4. In this regard the Court notes that the decision of the Indictment Chamber of 23 November 1994 pertaining to the applicant's detention was given by a court in adversarial proceedings. This means, according to the applicable case-law (see, e.g., the De Wilde, Ooms and Versyp v. Belgium judgment of 18 June 1971, Series A no. 12, p. 40, § 76), that the judicial control required by Article 5 § 4 was incorporated in the original judicial decision and that no further remedy was required under Article 5 § 4 (see the E. v. Norway judgment of 29 August 1990, Series A no. 181-A, § 60). In the light of this conclusion in relation to Article 5 § 4, the Court does not deem it necessary in the instant case to inquire whether the less strict requirements of Article 13 were complied with (see in particular the de Jong, Baljet and van den Brink v. the Netherlands judgment of 22 May 1984, Series A no. 77, p. 27, § 60). Furthermore, the right of appeal in matters of detention is not as such guaranteed by the Convention, and Article 13 of the Convention cannot be relied upon in circumstances where the alleged violation of the Convention lies in the province of a court (see the Delcourt v. Belgium judgment of 17 January 1970, Series A no. 11, p. 14, § 25). Therefore this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected under Article 35 § 4 of the Convention. Entscheid For these reasons, the Court, unanimously, DECLARES ADMISSIBLE , without prejudging the merits, the applicant's complaints about the length of the release proceedings; DECLARES INADMISSIBLE the remainder of the application. Erik Fribergh Registrar Christos Rozakis President