BGE 20001130_27426_95 vom 30. November 2000

Bundesgericht (BGE), 2000-11-30, FR

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FR: BGE 20001130_27426_95 du 30 novembre 2000

IT: BGE 20001130_27426_95 del 30 novembre 2000

Regeste

Regeste Diese Zusammenfassung existiert nur auf Französisch. SUISSE: Art. 5 par. 4 CEDH. Durée du contrôle de la détention préventive (32 jours). La détention provisoire du requérant était fondée sur sa participation présumée, en tant que membre du groupe terroriste "Carlos", à divers actes criminels et visait à prévenir tout risque de fuite et de collusion. Ces motifs étaient légitimes et les parties n'ont pas fait état d'une complexité particulière de l'affaire. Le Ministère public de la Confédération a rejeté la requête de mise en liberté du requérant le lendemain, et le recours de celui-ci à la Chambre d'accusation a été introduit quatre jours plus tard, soit dans le délai légal. Le Tribunal fédéral a alors imparti des délais de six, respectivement dix jours aux intéressés pour présenter leurs observations, ce qui n'était pas nécessaire et apparaît trop long. Puis le Tribunal fédéral a mis dix jours - six jours de travail - pour rendre sa décision, alors que vingt et un jours s'étaient déjà écoulés depuis le dépôt de la requête, ce qui est excessif. Si la Suisse s'est dotée d'un tel double degré de juridiction, elle doit organiser son système judiciaire de manière à satisfaire aux exigences de l'art. 5 par. 4 CEDH. Vu les retards intervenus, la durée globale de la procédure et l'enjeu de celle-ci pour le requérant, il n'a pas été statué à bref délai sur sa requête de mise en liberté (ch. 32 - 39). Conclusion: violation de l'art. 5 par. 4 CEDH.

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Erwägungen

E. 1

The case originated in an application (no. 27426/95) against Switzerland lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Swiss national, Mr G.B. ("the applicant"), on 16 May 1995.

E. 2

The applicant was represented by Ms B. Hug, a lawyer practising in Zürich, Switzerland. The Swiss Government ("the Government") were represented by their Agent, Mr P. Boillat, Head of the International Affairs Division of the Federal Office of Justice.

E. 3

The applicant alleged, in particular, that the release proceedings in which he was involved were not conducted speedily as required by Article 5 § 4 of the Convention.

E. 4

On 17 January 1997 the Commission decided to communicate the complaint under Article 5 § 4 of the Convention to the Government.

E. 5

The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

E. 6

The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

E. 7

By a decision of 3 February 2000 the Chamber declared the application partly admissible.

E. 8

The applicant and the Government each filed observations on the merits (Rule 59 § 1). After consulting the parties, the Chamber decided that no hearing on the merits was required (Rule 59 § 2 in fine). THE FACTS I. THE CIRCUMSTANCES OF THE CASE

E. 9

The applicant, a Swiss citizen born in 1945, resides in Minusio, Switzerland. A. Proceedings before the Federal Attorney's Office

E. 10

On 20 September 1994, the applicant was arrested and remanded in custody on urgent suspicion (dringender Verdacht) of having participated together with the "Carlos" terrorist group in an attack on the radio station Radio Free Europe in Munich and in attacks on diplomatic staff in Lebanon and France. The warrant of arrest also referred to a danger of collusion and absconding.

E. 11

On 22 September 1994 the investigating judge of the Canton of Bern confirmed the detention on remand of the applicant. The decision noted that the suspicion was based on files of the East German State security authorities and the Hungarian intelligence service. There was an urgent suspicion that, as a supporter of the "Carlos" group, he had participated in the various events. Additional investigations would be necessary since the applicant refused to comment on his contacts with the group. According to the decision, detention was further required in order to avoid collusion with other members of the group. There was also a danger of absconding in view of the severity of the possible prison sentence.

E. 12

The investigations were then conducted by the Federal Attorney's Office (Bundesanwaltschaft).

E. 13

On Friday, 21 October 1994, the applicant filed a request with the Federal Attorney for release from detention. He contested the urgent suspicion that he had committed the offences at issue and that there was a danger of collusion and absconding. He also requested consultation of the case-file. The request was received by the Federal Attorney on Monday, 24 October.

E. 14

On Tuesday, 25 October 1994, the Federal Attorney dismissed the applicant's request. The decision, referring to various investigations still to be undertaken as well as a danger of collusion and absconding, was served on the applicant on Thursday, 27 October. B. Proceedings before the Federal Court

E. 15

On Monday 31 October 1994, the applicant filed an appeal (Beschwerde) against the decision of 25 October with the Indictment Chamber (Anklagekammer) of the Federal Court, invoking Article 5 §§ 1, 2 and 4 and Article 6 § 3 of the Convention and requesting release from detention. He complained that more than six weeks had lapsed without the lawfulness of his detention having been examined by a court within the meaning of Article 5 § 4 of the Convention, and that he had not been able to consult the case file. The appeal was received by the Federal Court on Tuesday 1 November 1994.

E. 16

On the same day the President of the Indictment Chamber transmitted a copy of the appeal to the Federal Attorney who was requested to submit her observations by Monday 7 November 1994. The Federal Attorney was further asked to send a copy of her observations to the applicant who, in turn, was requested to submit any observations by 11 November 1994.

E. 17
On 7 November 1994, the Federal Attorney's Office filed her observations. They were served on the applicant on 8 November 1994.

E. 18
The applicant filed his observations in reply on Friday 11 November 1994. These observations were received by the Federal Court on Monday 14 November.

E. 19
On Monday 21 November 1994, the Indictment Chamber of the Federal Court dismissed the applicant's request, the decision being served on the applicant on Tuesday 22 November 1994.

E. 20
In respect of the applicant's complaint that he could not consult the case-file, the Indictment Chamber found that the applicant had had knowledge of the essential documents. The decision further confirmed that there was sufficient suspicion that the applicant had committed the offences at issue and that there was also a danger of absconding and of collusion. C. Applicant's release from detention

E. 21
On 30 November 1994 the Federal Attorney's Office decided to release the applicant from detention on remand. The decision stated, inter alia , that the original suspicions directed against the applicant had not been confirmed (erhärtet). II. RELEVANT DOMESTIC LAW

E. 22
According to Section 52 of the Federal Act on Criminal Procedure (Bundesstrafrechtspflegegesetz), a person detained on remand may at any time file a request for release from detention. If the investigating judge or the Federal Attorney refuse the request, an appeal may be filed with the Indictment Chamber of the Federal Court. According to Sections 105 bis and 217 of the Act, the time-limit for filing the appeal is three days. Erwägungen THE LAW I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

E. 23
The applicant complained that his request for release was not decided speedily within the meaning of Article 5 § 4 of the Convention, which states: "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."

E. 24

The Government submitted that the duration of the proceedings complied with the requirements under Article 5 § 4 of the Convention. A. Period to be taken into consideration

E. 25
The applicant submitted that the period to be examined under Article 5 § 4 of the Convention commenced on 21 October 1994, when he filed his request for release from detention, and ended on 22 November 1994, when he was served the decision of the Federal Court.

E. 26
The Government contended that the period commenced on 24 October 1994 when the applicant's request was received by the Federal Attorney. It ended on 22 November when the Federal Court's decision was served on the applicant, though an issue arises whether this should not have been 21 November, i.e. the date when the Federal Court gave its decision. In the Government's view, the period of four days from 27 to 31 October, when the applicant prepared his appeal to the Federal Court, cannot be counted.

E. 27
The Court considers that the submission of the applicant's request for release from detention to the Federal Attorney opened the administrative proceedings and was a prerequisite for the Federal Court's exercise of judicial supervision (see the Sanchez-Reisse v. Switzerland judgment of 21 October 1986, Series A no. 107, p. 20, § 54). The period to be examined therefore commenced on 21 October 1994. It ended on 22 November 1994, when the Federal Court's decision was served on the applicant. As a result, the period to be examined under Article 5 § 4 of the Convention lasted 32 days. The period which the applicant required for filing his appeal to the Federal Court falls to be examined together with the issue whether the proceedings were conducted speedily (see below, § 34). B. Compliance with the requirement that the decision be taken "speedily"

E. 28
The applicant submitted that the proceedings were unnecessarily prolonged as they were conducted in two stages. The proceedings should have been conducted with particular speed, as during the investigations the pressing suspicion that an offence has been committed is far less relevant than in the pre-trial proceedings which succeed the investigations once the suspicion has become more probable. Furthermore, the authorities themselves are responsible if a prolongation of the proceedings resulted from the fact that the applicant did not receive all the documents of the case file. The delay can equally not be justified with a similar second case which had to be examined at the same time.

E. 29
The Government contended that a serious assessment of the lawfulness of the applicant's detention could not have been conducted within a shorter period of time. Swiss law provides for a decision of an administrative authority preceding the judicial examination of the detention. This system has been considered to be in conformity with the Convention (see the Sanchez-Reisse judgment cited above, p. 17, § 54). 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.

E. 30

The Government drew attention to the manner in which the applicant's request of 21 October 1994 was dealt with. The Federal Attorney was able to give her reply within one day. The President of the Indictment Chamber opened the procedure before the Federal Court on 1 November 1994, i.e. the day when the applicant's appeal arrived; and after the applicant's reply was received by the Federal Court on 14 November, it gave its decision only one week later, on 21 November 1994.

E. 31

The Government further pointed out that the Federal Court had no knowledge of the case-file before the applicant filed his appeal on 31 October 1994. Matters were complicated by the fact that on 21 October 1994 an additional appeal was filed by another applicant. 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.

E. 32

The Court recalls that Article 5 § 4 of the Convention, in guaranteeing to persons arrested or detained a right to institute proceedings to challenge the lawfulness of their deprivation of liberty, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and ordering its termination if it proves unlawful (see Baranowski v. Poland [GC], no. 28358/95, ECHR 2000).

E. 33

It is true that in the case of Sanchez-Reisse v. Switzerland -involving extradition proceedings with a similar two tier-procedure as in the present case - the release proceedings lasting 31 days and 46 days, respectively, were found to be in breach of Article 5 § 4 of the Convention. Nevertheless, the requirement of Article 5 § 4 of the Convention that decisions be taken "speedily" must - as is the case for the "reasonable time" stipulation in Articles 5 § 3 and 6 § 1 of the Convention - be determined in the light of the circumstances of each case (see the Sanchez-Reisse judgment cited above, p. 20, § 55, and p. 22, § 60).

E. 34

Turning to the circumstances of the present case, the Court notes that the applicant was remanded in custody on the urgent suspicion of having participated, together with a terrorist group, in various criminal acts, and in view of a danger of collusion and of absconding. In his request for release from detention of 21 October 1994, the applicant contested these grounds. In the Court's opinion, these were straightforward matters, and it has not been argued by the parties that the case itself disclosed any features of complexity.

E. 35

Next the Court will examine the various stages of the proceedings. Once the Federal Attorney had received the applicant's request on 24 October 1994, she dismissed it one day later, on 25 October. It took the applicant four days to file his appeal. This lapse of time (the week-end not counting) did not exceed the time-limit set by the Federal Act on Criminal Procedure (see above, § 21).

E. 36

After the applicant's appeal had been received by the Federal Court on Tuesday 1 November 1994, the latter organised the procedure on the same day. It requested the Federal Attorney to comment on the appeal by Monday 7 November, and the applicant to submit his reply by 11 November. In the Court's view, however, as the Federal Attorney had previously been able to give her decision of 25 October, only one day after having received the applicant's request, and as the applicant was conversant with his own case, this period of 10 days for filing observations appears unnecessarily long.

E. 37

Once the applicant had filed his observations on Friday 11 November 1994, the Federal Court required an additional 10 days -6 working days - to pronounce its decision on Monday 21 November 1994. Bearing in mind that by 11 November the proceedings had already been pending before the Federal Court for 10 days, and that altogether 21 days had lapsed since the request for release from detention of 21 October, the Court finds that this period was excessive.

E. 38

The Court observes that Switzerland has chosen, for such cases involving release from detention on remand, a two tier-procedure which includes as the first instance an administrative authority and, as the second, the Federal Court, which is the highest judicial authority in Switzerland. However, these circumstances cannot in themselves serve to justify the applicant's being deprived of his rights under Article 5 § 4 of the Convention. It is for the State to organise its judicial system in such a way as to enable its courts to comply with the requirements of that provision (see, mutatis mutandis , the R.M.D. v. Switzerland judgment of 26 September 1997, Reports of Judgments and Decisions 1997-VI, p. 2015, § 54).

E. 39

Having regard to the delays at issue, the overall duration of the proceedings, and what was at stake for the applicant, the Court concludes that the proceedings were not conducted "speedily" within the meaning of Article 5 § 4 of the Convention. There has accordingly been a breach of this provision. II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

E. 40

Article 41 of the Convention provides: "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party." A. Damage

E. 41

The applicant claimed non-pecuniary damage amounting to 2,100 Swiss francs (CHF) in view of the delays in the proceedings. The Government asked the Court to rule that a finding of a violation constituted sufficient just satisfaction.

E. 42

The Court, making an assessment on an equitable basis, awards the applicant CHF 2,000 under this head. B. Costs and expenses

E. 43

The applicant also claimed CHF 3,500 for lawyer's costs in the domestic proceedings, and CHF 2,600 for the proceedings in Strasbourg.

E. 44

The Government recalled that only one of the applicant's complaints had been declared admissible, and that this particular complaint only concerned a minor part of the observations submitted by the applicant during the admissibility proceedings. In this respect, the Government considered the sum of CHF 4,000 both for the domestic proceedings and for the proceedings in Strasbourg as being adequate.

E. 45

The Court, in accordance with its case-law, will consider whether the costs and expenses claimed were actually and necessarily incurred in order to prevent or obtain redress for the matter found to constitute a violation of the Convention and were reasonable as to quantum (see, for instance, Nilsen and Johnsen v. Norway [GC], no. 23118/93 , § 62, ECHR 1999-II).

E. 46

The Court finds the applicant's claim for the domestic proceedings excessive. Making an assessment on an equitable basis, the Court awards him CHF 4,000 for costs in the domestic proceedings and in the Strasbourg proceedings. C. Default interest

E. 47

According to the information available to the Court, the statutory rate of interest applicable in Switzerland at the date of adoption of the present judgment is 5% per annum. Entscheid FOR THESE REASONS, THE COURT UNANIMOUSLY 1. Holds that there has been a violation of Article 5 § 4 of the Convention; 2. Holds (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, 2,000 (two thousand) Swiss francs for non-pecuniary damage and 4,000 (four thousand) Swiss francs in respect of legal costs; (b) that simple interest at an annual rate of 5% shall be payable from the expiry of the above-mentioned three months until settlement; 3. Dismisses the remainder of the applicant's claim for just satisfaction. Done in English, and notified in writing on 30 November 2000, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court. Vincent Berger Registrar Georg Ress President