The Canada-Afghan Detainee Agreement

In 2007 Amnesty International and the B.C. Civil Liberties Association filed an application in the Federal Court, asking for judicial review of the Canadian Forces' practice of releasing detainees to Afghan security forces. The groups claimed that the practice exposed the prisoners to torture and human rights violations, and was a breach of Canada's international obligations and ss. 7 and 12 of its own Charter. One of the primary criticisms of the Canada-Afghanistan Detainee agreement was that it did not allow Canada to check on the detainees after they had been transferred.

Canada's Department of National Defence missed the initial deadline to respond to the complaint, but later requested an extension to put together the necessary materials to defend the detainee policy. In response, the rights groups sought an injunction ordering a stop to the transfers until the case can be fully heard. The application was scheduled to be heard in Federal Court on May 3.

The morning of the hearing, lawyers for the federal government announced the signing of a new agreement with Afghan officials which gave Canadian government personnel unrestricted access to the detainees after their transfer. The agreement also provides that Afghan authorities will keep the prisoners in a limited number of facilities and that Canadian officials will be informed of any change in the prisoner's circumstances. In light of the new information the Federal Court judge declared the injunction was no longer an urgent matter and postponed the proceedings.

The issue still remains whether the current agreement and policy will withstand judicial review. Amnesty International and the B.C. Civil Liberties Association claim that Canada's Charter obligations extend to its armed forces acting overseas, arguing that the Supreme Court of Canada's 1998 decision in *R. v. Cookstands* for the proposition that, "the Charter applies to servants of the Canadian government acting on foreign soil, provided the application … will not conflict with the [other country's] jurisdiction." The federal government asked the court to throw out the case, arguing that the Charter does not apply to protect detainees against torture by other states. If the Charter does apply, the issue will be whether the detainee policy violates ss. 7 and/or 12 of the Charter, which protect life, liberty and security of the person and the right not to be subject to cruel and unusual punishment, respectively.

Sources

- "Canada has new detainee deal, court told" CBC News (3 May 2007).
- "Defence lets deadline pass over court suit against torture investigation" CBC News (25 March 2007).

- “DND asks for extension to defend detainee policy; Ministry request three more months to respond to rights groups’ accusations” The Globe and Mail (13 April 2007).
- Jason Gratl, “Advocating against torture is not sympathy for the enemy” The Lawyers Weekly (11 May 2007) 1.
- “Ottawa silent as time runs out for response on detainees; Decision not to counter rights challenge make signal intent to make Charter argument” The Globe and Mail (12 April 2007).

Further Readings

- “Detainees in Afghanistan must not face torture, says rights groups in a call for a judicial review” Amnesty International (21 February 2007).
- R. v. Cook, [1998] 2 S.C.R. 597.

[i] Jason Gratl, “Advocating against torture is not sympathy for the enemy” The Lawyers Weekly (11 May 2007) 1.