



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF CHRAIDI v. GERMANY

(Application no. 65655/01)

JUDGMENT

STRASBOURG

26 October 2006

FINAL

26/01/2007

In the case of Chraidi v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,
Karel Jungwiert,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Javier Borrego Borrego,
Renate Jaeger,
Mark Villiger, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 October 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 65655/01) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a stateless person, Mr Yasser Chraidi (“the applicant”), on 27 November 2000.

2. The applicant was represented by Mr D. Lammer, a lawyer practising in Berlin. The German Government (“the Government”) were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialrätin*, of the Federal Ministry of Justice.

3. On 21 November 2005 the Court decided to communicate the application. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

4. On 1 April 2006 this case was assigned to the newly composed Fifth Section (Rules 25 § 1 and 52 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Yasser Chraidi, was born in 1959 in Lebanon. At the time of lodging his application, he was detained in Berlin. He is currently living in Lebanon.

6. On 1 August 1984 the Berlin Tiergarten District Court issued an arrest warrant in respect of the applicant on the ground that he was strongly suspected of having murdered E.

7. On 19 July 1990 the Berlin Tiergarten District Court issued a further arrest warrant in respect of the applicant and five other suspects, born in Lebanon, Libya or Morocco. The court accused the applicant of having prepared, with others, a bomb attack at the “La Belle” discotheque in Berlin on 5 April 1986 in order to kill as many members of the American armed forces as possible. During this terrorist attack, three people had been killed and 104 seriously injured.

8. On 1 September 1992 the applicant was arrested by the police in Lebanon and was subsequently taken into detention with a view to extradition.

9. On 21 June 1994 a Lebanese court acquitted the applicant of E.’s murder but convicted him of forgery and sentenced him to one year and six months’ imprisonment.

10. On 24 May 1996 the applicant was extradited to Germany and subsequently held in detention on remand on account of the arrest warrant issued in 1990.

11. On 25 November 1996 the Berlin Court of Appeal ordered the applicant’s continued detention on remand. It held that the reasonable suspicion that the applicant had committed the offences with which he had been charged resulted, among other things, from the confession of one of the other suspects. The danger of his absconding still persisted because the applicant had been extradited to Germany only in May 1996 and had neither a fixed dwelling nor social ties in Germany which would prevent him from absconding if released. The court moreover referred to the lifelong prison sentence the applicant faced and underlined that more lenient preventive measures would not be suitable. Lastly, there had been no breach of the obligation to proceed speedily (*Beschleunigungsgebot*).

12. On 30 January 1997 the public prosecutor filed the bill of indictment. On 5 September 1997 the Berlin Regional Court opened the main proceedings against the applicant and four other accused. Between 1997 and 2000 the Berlin Court of Appeal repeatedly ordered the applicant’s continued detention on remand.

13. On 13 January 2000 the Berlin Regional Court rejected a request by the applicant for release. It held that there was still a danger of his absconding. Furthermore, the reasonable suspicion that the applicant had committed the offences with which he had been charged persisted. The applicant’s continued detention was also proportionate having regard to the serious nature of those offences, the prospective sentence, the importance of the case and the particular public interest in the prosecution of these offences. Furthermore, there had been no breach of the obligation to proceed speedily.

14. On 1 March 2000 the Berlin Court of Appeal upheld that decision. Concerning the suspicions as regards the applicant, the court pointed out that it was bound by the assessment of the Regional Court. Furthermore, the danger of the applicant's absconding persisted in view of the lifelong prison sentence he faced. The objective of his detention on remand could accordingly not be accomplished by alternative, less radical, preventive measures. Although the applicant had been detained since as far back as 8 January 1994, his further detention remained proportionate having regard to the importance of the case, the character and seriousness of the offences and the particular public interest in the prosecution of these offences. Referring to the principle of proportionality, the court underlined that a detainee's right to liberty could outweigh the public interest in the prosecution as time passed, if there was, for instance, an imminent risk of irreparable damage to his health. In the present case, however, nothing suggested that the applicant's life or health were at risk. Moreover, given that the Regional Court had continuously held two hearings per week since November 1997, the length of the proceedings could not be considered disproportionate.

15. On 24 May 2000 the Federal Constitutional Court refused to admit a complaint by the applicant, without giving any reasons. Its decision was served on the applicant's lawyer on 30 May 2000.

16. On 13 November 2001 the Berlin Regional Court convicted the applicant on three counts of aiding and abetting murder, on 104 counts of aiding and abetting attempted murder, and of aiding and abetting causing an explosion (*Herbeiführung einer Sprengstoffexplosion*). The court alluded to the historical background of the case, in particular to the tensions between the United States and Libya which had arisen following terrorist attacks in 1985. In January 1986 the United States government had imposed a trade embargo on Libya and had ordered the freezing of all Libyan State assets in United States banks. These measures had led to military intervention and to the planning by Libyan nationals of terrorist attacks on United States facilities in Germany. The court further pointed out that the applicant's crimes were punishable by imprisonment for up to fifteen years and sentenced him to fourteen years' imprisonment. When determining the sentence, the court took into account, among other things, the fact that the applicant's detention on remand and the proceedings had lasted an unusually long time. It further determined that since 8 January 1994 the applicant had been detained in Lebanon with a view to extradition in connection with the present case. This period of detention was to be deducted from his prison sentence at a ratio of 1:3 until 30 April 1994 and at a ratio of 1:2 from 1 May 1994. The court moreover ordered the applicant's continued detention. The judgment, which ran to 380 pages, was served on the applicant's lawyer on 10 January 2003.

17. The Berlin Regional Court delivered its judgment after holding 281 hearings with an average of two hearings per week and having heard 169 witnesses. The hearings, which lasted on average five hours each, were regularly attended by the five accused, their 15 lawyers, 106 joint plaintiffs, their 29 lawyers and three interpreters.

18. On 24 June 2004 the Federal Court of Justice dismissed appeals on points of law by the applicant and the public prosecutor.

19. On 28 April 2005 the applicant was released.

II. RELEVANT DOMESTIC LAW

20. Article 117 of the Code of Criminal Procedure provides, *inter alia*:

“As long as the accused is in detention on remand, he may at any time apply for a court hearing to determine whether the arrest warrant is to be revoked or whether its execution is to be suspended in accordance with Article 116.”

21. Article 230 of the Code of Criminal Procedure provides, *inter alia*:

“No trial shall be held in respect of a person who is absent.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

22. The applicant complained that his detention on remand had lasted an excessively long time. He relied on Article 5 § 3 of the Convention, which provides:

“Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

A. Admissibility

1. *Loss of standing as a victim*

23. The Government contended that the applicant could no longer claim to be a victim because the Regional Court had explicitly acknowledged that his detention on remand had lasted an unusually long time and had taken this fact into account when determining his sentence.

24. The Court reiterates that a decision or measure favourable to the applicant does not in principle deprive the individual concerned of his status of victim within the meaning of Article 34 of the Convention (see *Labita v. Italy* [GC], no. 26772/95, § 142, ECHR 2000-IV; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; and *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI). However, as the Convention leaves to each Contracting State, in the first place, the task of securing the enjoyment of the rights and freedoms it enshrines (see *Cordier v. Germany* (dec.), no. 71741/01, 19 January 2006), this general rule is subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51; *Jansen v. Germany* (dec.), no. 44186/98, 12 October 2000; and *Beck v. Norway*, no. 26390/95, § 27, 26 June 2001). In cases concerning the failure to observe the reasonable-time requirement guaranteed by Article 6 § 1 of the Convention, the national authorities can afford adequate redress in particular by reducing the applicant's sentence in an express and measurable manner (see *Eckle*, cited above, § 66, and *Beck*, cited above, § 27). The Court has held that such a reduction of the sentence is also capable of affording adequate redress for a violation of Article 5 § 3 in cases in which the national authorities had failed to hear within a reasonable time the case of an applicant held in detention on remand (see *Dzelili v. Germany*, no. 65745/01, § 83, 10 November 2005).

25. Applying these principles to the present case, the Court observes that, although the Convention forms an integral part of the law of the Federal Republic of Germany (see *Eckle*, cited above, § 67) and there was accordingly nothing to prevent the Regional Court from holding, if appropriate, that the length of the applicant's detention on remand had been in breach of the Convention, either expressly or in substance, the latter court merely conceded that the impugned detention had lasted an "unusually long" time (see paragraph 16 above). Furthermore, the Court is not satisfied that the applicant was afforded adequate redress for the alleged violation because the Regional Court failed to specify to what extent the applicant's sentence had been reduced on account of the length of his detention on remand (see *Dzelili*, cited above, § 85).

26. The Court therefore considers that the Regional Court's statement concerning the unusual length of the applicant's detention did not deprive the latter of his status of victim within the meaning of Article 34 of the Convention.

2. Exhaustion of domestic remedies

27. The Government maintained that the applicant had exhausted domestic remedies only in respect of his detention until 24 May 2000, the date of the final decision by a domestic court concerning his request for

release. They pointed out that, once a certain period had elapsed after that decision, the applicant could have lodged a further application for release. As he had not availed himself of the opportunity to institute fresh proceedings before the domestic courts after the Federal Constitutional Court's decision of 24 May 2000, he had failed to exhaust domestic remedies in respect of his detention after that date.

28. The applicant did not submit any observations in reply within the time-limit fixed by the Court.

29. The Court refers to its case-law to the effect that an applicant should not usually be required to use at very short intervals a remedy which by its nature might be repeated an indefinite number of times (see *Rieme v. Sweden*, 22 April 1992, § 50, Series A no. 226-B, and *Guzzardi v. Italy*, 6 November 1980, § 80, Series A no. 39). The re-examination of a case may, however, be appropriate where new facts have emerged which could furnish a separate basis for a fresh decision. In cases of continued detention for instance, the prolongation of the detention in itself may under certain circumstances justify a re-examination of the question of release (see *Lynas v. Switzerland*, no. 7317/75, Commission decision of 6 October 1976, Decisions and Reports 6, p. 141, at p. 167).

30. In the present case, the applicant had been held in detention on remand for exactly four years when the Federal Constitutional Court refused to examine his constitutional complaint. Under German law, the applicant could have lodged a further application for release at any time after that decision (see paragraph 20 above). However, having regard to the fact that on 13 November 2001 the Regional Court convicted the applicant and ordered his continued detention because of the persisting danger of his absconding, it is rather doubtful whether such a request in the period of time preceding the latter decision would have had any prospect of success. In any event, given that the applicant's detention on remand within the meaning of Article 5 § 3 ended with his conviction by the Regional Court on 13 November 2001 (see *Labita*, cited above, § 147), that is, eighteen months after the decision of the Federal Constitutional Court, the Court is not satisfied that the institution of fresh proceedings would have shortened the length of his detention on remand to a significant extent.

31. The Court therefore holds that the Government's preliminary objection concerning the exhaustion of domestic remedies must be dismissed.

32. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *Period to be taken into consideration*

33. The period to be taken into consideration under Article 5 § 3 started with the applicant's transfer to Germany on 24 May 1996 (see *Nedyalkov v. Bulgaria*, no. 44241/98, § 61, 3 November 2005, and *De Wilde, Ooms and Versyp v. Belgium*, 18 June 1971, § 71, Series A no. 12) and ended on 13 November 2001 with his conviction by the Berlin Regional Court (see paragraph 30 above). The applicant's detention on remand thus lasted five years and almost six months.

2. *Reasonableness of the length of detention*

34. The applicant submitted that the length of his detention on remand could not be regarded as justified for the purposes of Article 5 § 3 of the Convention. The Government contested this view.

35. The Court reiterates that the issue of whether a period of detention is reasonable cannot be assessed *in abstracto*. Whether it is reasonable for an accused to remain in detention must be assessed in each case according to its special features and on the basis of the reasons given in the domestic decisions and of the well-documented facts mentioned by the applicant in his applications for release. Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty (see *W. v. Switzerland*, 26 January 1993, § 30, Series A no. 254-A, and *Labita*, cited above, § 152).

36. The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings (see *I.A. v. France*, 23 September 1998, § 102, *Reports* 1998-VII, and *Labita*, cited above, § 153).

(a) General approach

37. The Court notes at the outset that the present case relates to large-scale offences committed in the context of international terrorism. States combating this form of terrorism may be faced with extraordinary difficulties. The Court, whose role it is to examine measures taken in this regard by Contracting States as to their conformity with the Convention, is not oblivious of these difficulties. It sees no reason to depart from the

general approach it has adopted in previous cases of a similar nature (see *Klass and Others v. Germany*, 6 September 1978, §§ 48-49 and 59, Series A no. 28; *Brogan and Others v. the United Kingdom*, 29 November 1988, § 48, Series A no. 145-B; *Murray v. the United Kingdom*, 28 October 1994, § 47, Series A no. 300-A; *Pantano v. Italy*, no. 60851/00, § 70, 6 November 2003; and *Van der Tang v. Spain*, 13 July 1995, § 75, Series A no. 321). However, in the context of the issues arising in the present case, the Court considers that the specific nature of these offences and, in particular, the difficulties intrinsic to the investigation of offences committed by criminal associations acting on a global scale call for special consideration. It will bear this context in mind when assessing the reasonableness of the length of the applicant's continued detention, in particular the grounds for his detention and the conduct of the proceedings in the light of the complexity of the case.

(b) Grounds for continued detention

38. As regards the grounds for the applicant's continued detention, the Court notes that the competent judicial authorities advanced three principal reasons for not suspending the arrest warrant, namely that the applicant remained under a strong suspicion of having committed the crimes of which he was accused, the serious nature of these offences and the fact that the applicant would be likely to abscond if released, given the sentence which he risked incurring if found guilty as charged.

39. The Court accepts that the reasonable suspicion that the applicant committed the offences with which he had been charged, being based on cogent evidence, persisted throughout the trial leading to his conviction. It also agrees that the alleged offences were of a serious nature.

40. As regards the danger of the applicant's absconding, the Court observes that the possibility of a severe sentence alone is not sufficient after a certain lapse of time to justify continued detention based on the danger of flight (see *Wemhoff v. Germany*, 27 June 1968, § 14, Series A no. 7, and *B. v. Austria*, 28 March 1990, § 44, Series A no. 175). In the present case the national courts also relied on other relevant circumstances, including the fact that the applicant had been extradited from Lebanon to Germany for the purposes of criminal proceedings in the context of international terrorism. He had neither a fixed dwelling nor social ties in Germany which might have prevented him from absconding if released. Accordingly, the Court is satisfied that a substantial risk of the applicant's absconding persisted throughout his detention and accepts the domestic courts' finding that no other measures to secure his presence would have been appropriate. It further observes that under German legislation no trial can be held in respect of an accused who has absconded and whose whereabouts are unknown (see paragraph 21 above).

41. Consequently, the Court concludes that there were relevant and sufficient grounds for the applicant's continued detention.

(c) Conduct of the proceedings

42. It remains to be ascertained whether the judicial authorities displayed "special diligence" in the conduct of the proceedings.

43. The Court takes the view that the applicant's case was extremely complex. It concerned serious charges against him and four co-defendants and necessitated the hearing of 169 witnesses. The case had a terrorist and international background and, moreover, involved 106 joint plaintiffs.

44. As to the conduct of the proceedings by the judicial authorities, the parties agreed that no delay in the proceedings had been attributable to the German courts and authorities, which had displayed the necessary diligence throughout the proceedings. The Court notes that, following the applicant's indictment on 30 January 1997, his trial in the Berlin Regional Court began on 5 September 1997. Hearings took place on 281 separate days with on average two hearings per week until the Regional Court's decision of 13 November 2001. The hearings were regularly attended by five defendants, their 15 lawyers, 106 joint plaintiffs and their 29 lawyers. Accordingly, having regard to the difficulties intrinsic to the prosecution of offences committed in the context of international terrorism, the competent judicial authorities cannot be said to have displayed a lack of special diligence in handling the applicant's case.

45. In the light of these various factors, the Court finds that the competent national court acted with the necessary special diligence in conducting the proceedings in the applicant's case.

(d) Overall assessment

46. The Court has found in previous cases that detention on remand exceeding five years constituted a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 77, 8 June 2006; *I.A. v. France*, cited above, § 112; and *Khudoyorov v. Russia*, no. 6847/02, § 189, 8 November 2005).

47. The present case involved a particularly complex investigation and trial concerning serious offences of international terrorism which caused the death of three victims and serious suffering to more than a hundred. Following his extradition from Lebanon in 1996, the sole reason for the applicant's presence in Germany was to stand trial for these offences.

48. In these exceptional circumstances, the Court concludes that the length of the applicant's detention can still be regarded as reasonable. There has accordingly been no violation of Article 5 § 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 2 OF THE CONVENTION

49. The applicant complained that the length of his detention on remand violated the presumption of innocence. He relied on Article 6 § 2 of the Convention, which provides:

“Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

50. The Court observes that this complaint is based on the same facts as the complaint under Article 5 § 3 and must be likewise declared admissible (see paragraph 32 above).

51. Given that the Court takes into account the presumption of innocence when assessing whether the length of a period of pre-trial detention was justified (see *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *Labita*, cited above, § 152), no separate question arises under Article 6 § 2. There is accordingly no need to examine the complaint regarding the length of the applicant’s detention on remand under this Article as well.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

52. In his first letter to the Court, the applicant submitted that the length of the criminal proceedings against him had not been proportionate. However, he also observed that the German authorities could not be held responsible for the unusual length of the impugned proceedings. In his subsequent submissions, the applicant pointed out that the national authorities had observed their obligation to proceed speedily throughout the proceedings and that the length of the proceedings was rather due to the complexity of the case and the number of persons involved in the proceedings.

53. The Government argued that the applicant had obviously not intended to raise the length-of-proceedings complaint.

54. The Court notes that the applicant’s submissions on this point are disputable as he pointed out that the German authorities and courts could not be held responsible for the unusual length of the proceedings. Furthermore, he failed to submit any clarification in response to the Government’s allegation that he had not complained of the length of the proceedings. The Court therefore finds that the applicant failed to substantiate his length-of-proceedings complaint with sufficient clarity.

55. Even assuming that domestic remedies have been exhausted, this part of the application is accordingly manifestly ill-founded and must be rejected as inadmissible pursuant to Article 35 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint regarding the length of the applicant's detention on remand admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 5 § 3 of the Convention;
3. *Holds* that there is no need to examine the complaint regarding the length of the applicant's detention on remand under Article 6 § 2 of the Convention.

Done in English, and notified in writing on 26 October 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the concurring opinion of Judge Borrego Borrego is annexed to this judgment.

P.L.
C.W.

CONCURRING OPINION OF JUDGE BORREGO BORREGO

For the purpose of a review under Article 5 § 3 of the Convention, the Court's case-law establishes two criteria: the grounds for the continuous detention and the conduct of the proceedings. On the basis of both criteria, the Court examines the particular circumstances of the case and decides on the reasonableness of the length of the applicant's detention on remand. In the present case, the Court has applied these general criteria (see paragraphs 37-45 of the judgment) and has examined the unusual, even exceptional, circumstances of this case (281 days of hearings, among others). The Court has therefore held that there has been no violation of the Convention. This is also my conclusion.

I nevertheless respectfully disagree with the preambular paragraph 37 as well as with the use of the words "international terrorism", which are repeatedly mentioned, four times in all (paragraphs 37, 40, 44 and 47).

Firstly, I find the initial considerations in paragraph 37 regarding international terrorism superfluous. In my opinion, they could lead readers to think that, in addition to the above-mentioned general criteria which characterise its jurisprudence, the Court has created a new criterion, concerning a specific category of crime: international terrorism. I think that international terrorism is not and should not be considered as a criterion. On the contrary, the nature of the crime has to be examined as part of the particular circumstances of every case.

The very specific and relevant circumstances of the instant case are weakened by the fact that the two general criteria are locked in between the initial general approach and the final overall assessment, which stresses the international terrorism aspect. I am convinced that there is no violation of the Convention, because the application of the two general criteria to the present case so proves. The insistence on referring to international terrorism and the special weight given to this crime is, in my opinion, unnecessary, and it could be dangerous for the Convention system.

Finally, I would like to express my complete disagreement with the expression "international terrorism". Not only is it wrong, but it could lead to misunderstandings. Indeed, it could give rise to questions or doubts. For instance, one might wonder whether there are different categories of the crime called terrorism and whether these different categories have different consequences. One might also wonder whether terrorism can be considered "international" depending on the terrorists' nationality (in which case, would the attack of 7 July 2005 in London, where the alleged perpetrators were British, be considered an example of international terrorism?). Other

questions may arise regarding the different nationalities and roles of those who plan the attack, those who finance it and those who execute it. And regarding the victims of terrorism, are there different categories of victim, depending on the type of terrorism? That would be repugnant.

“Popular democracy”, “organic democracy” and other similar expressions became part of European history and we all remember this. I would therefore gently ask the Court not to insist on using qualifications, and thus trying to make artificial distinctions, with respect to something that is purely and simply a crime: terrorism.