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Certificats de sécurité : victoire ou demi-victoire... et suite

Le jugement de la Cour Suprême du Canada à propos des certificats de sécurité fait la une du New York Times de ce matin (voir fichier attaché). Le NYT, "libéral" à l'américaine modéré et opposé à Guantanamo, ne manque pas d'insister sur ce qu'il appelle une victoire contre le "Guantanamo du Nord". Jugé à l'aune de la gauche, cette victoire est relative car "[l']existence des certificats n'est toutefois pas remise en question, ni l'emprisonnement indéfini qui en découle parfois." (Le Devoir, 24 février 2007) Reste que le gouvernement fédéral sera obligé de dévoiler la preuve à au moins l'avocat de l'accusé ou à un avocat qui sera "l'avocat du diable" mais, pour cause de sécurité nationale, pas à l'accusé lui-même. Les non-citoyens soupçonnés de terrorisme n'auront toujours droit qu'à une demi-justice. On se réjouira, cependant, que cette avancée soit source d'espoir et de soulagement -- dans un an -- aux six personnes actuellement victimes de cette parodie de justice. Tant mieux si ce jugement sert d'appui pour ceux et celles qui aux États-Unis luttent pour la justice qui y est bien plus mal en point qu'au Canada. Ceux et celles qui font de même au Canada auront la joie de voir aboutir partiellement un long et relativement solitaire combat.

Cette semaine, au Parlement fédéral, ce combat prend la forme d'empêcher le renouvellement, après 5 ans, de deux dispositions de la loi anti-terroriste concernant les détentions préventives et les interrogatoires pour fin d'enquête. L'issue du vote paraissait sceller en faveur d'un renouvellement jusqu'à ce que le nouveau chef Libéral, malgré une fronde dans son propre parti, change d'idée. Aujourd'hui, "le Bloc québécois et les libéraux ont dit vouloir contribuer à l'amélioration de la loi. Seul le NPD en demande l'abolition." (Le Devoir, 24 février 2007) Cette nouvelle incertitude, renforcée par le jugement de la Cour suprême et l'arrogance du chef Conservateur qui a profité de la protection juridique de la Chambre pour insinuer la culpabilité d'un parent d'un député Libéral à propos de l'affaire Air India, rend possible une nouvelle victoire ou demi-victoire. Pourquoi ne pas imiter une dirigeante du Regroupement Outaouais contre la guerre (ROCG) et envoyer à votre député fédéral une lettre réclamant le retrait de ces deux dispositions? (voir sa lettre en annexe) Vous trouverez l'adresse courriel de votre député à : <http://webinfo.parl.gc.ca/MembersOfParliament/MainMPsCompleteList.aspx?TimePeriod=Current&Language=F>

Marc Bonhomme

ANNEXE

La Loi antiterroriste de 2001 :

Lorsque la loi antiterroriste a été adoptée en décembre 2001, les parlementaires ont prévu que deux des clauses exceptionnelles les plus importantes soient réexaminées à tous les cinq (5) ans. Il s'agit des dispositions sur les arrestations préventives et les audiences d'investigation.

Ces dispositions permettent l'arrestation et la détention d'une personne sans qu'aucune accusation ne soit portée contre elle et surtout la possibilité qu'elle soit condamnée sans jamais connaître et sans jamais pouvoir contredire la preuve que l'on a présentée contre elle. Pour mieux comprendre, vous pouvez examiner les procédures semblables utilisées pour les certificats de sécurité dans la Loi sur l'Immigration : la possibilité qu'une personne soit condamnée sans jamais connaître et sans jamais pouvoir contredire la preuve que l'on a présentée contre elle, procédures qui sont présentement contestées devant la Cour suprême du Canada.

Ces dispositions sont un déni de justice indigne d'un pays comme le Canada qui s'est toujours enorgueilli de sa réputation internationale d'État respectueux des droits de la personne.

Le 13 février le gouvernement conservateur de Harper a déposé une motion afin de reconduire ces deux dispositions. Étant donné que ces dispositions constituent des entraves au respect des droits de la personne et aux libertés fondamentales, je vous demande de voter contre cette proposition la motion des conservateurs.

Francine Dumas

February 24, 2007
New York Times
Canadian Court Limits Detention in Terror Cases

By IAN AUSTEN

OTTAWA, Feb. 23 — Canada's highest court on Friday unanimously struck down a law that allows the Canadian government to detain foreign-born terrorism suspects indefinitely using secret evidence and without charges while their deportations are being reviewed.

The detention measure, the security certificate system, has been described by government lawyers as an important tool for combating international terrorism

and maintaining Canada's domestic security. Six men are now under threat of deportation without an open hearing under the certificates.

"The overarching principle of fundamental justice that applies here is this: before the state can detain people for significant periods of time, it must accord them a fair judicial process," Chief Justice Beverley McLachlin wrote in the ruling.

The three men who brought the case are likely to remain jailed or under strict parole because the court suspended its decision for a year to allow Parliament to introduce a law consistent with the ruling.

The decision reflected striking differences from the current legal climate in the United States. In the Military Commissions Act of 2006, Congress stripped the federal courts of authority to hear challenges, through petitions for writs of habeas corpus, to the open-ended confinement of foreign terrorism suspects at Guantánamo Bay, Cuba.

A federal appeals court in Washington upheld the constitutionality of that law this week, dismissing 13 cases brought on behalf of 63 Guantánamo detainees. Their lawyers said they would file an appeal with the Supreme Court. In two earlier decisions, the justices ruled in favor of Guantánamo detainees on statutory grounds but did not address the deeper constitutional issues that this case appears to present.

At a news conference in Montreal, a defendant, Adil Charkaoui, praised the Canadian court's decision.

"The Supreme Court, by 9 to 0, has said no to Guantánamo North in Canada," said Mr. Charkaoui, who is under tightly controlled, electronically monitored house arrest.

Stockwell Day, the Canadian minister of public safety, said Friday, "It is our intention to follow the Supreme Court ruling."

He added, "We are taking in stride what they did say and we will look at the changes that are necessary."

The decision is also the latest in a series of events that has seen Canada reconsider some national security steps it took after the Sept. 11, 2001, terrorist attacks. Last September, a judicial inquiry rebuked the police for falsely accusing a Syrian-born Canadian, Maher Arar, of terrorist connections. Those accusations, in 2002, led United States officials to fly Mr. Arar to Syria, where he was jailed and tortured. Earlier this year, the Canadian government reached a \$9.75 million settlement with Mr. Arar and offered a formal apology. The commissioner of the Royal Canadian Mounted Police also resigned for reasons related to the affair.

Canada's Parliament is divided over whether to continue two antiterrorism measures introduced in 2001 that are set to expire on March 1. The opposition

Liberal Party, which had brought in the law, does not want to continue its special preventive arrest powers or the secret court hearings it permits, which resemble grand jury hearings in the United States. Two other portions of that law have been struck down by courts in Ontario.

“We’ve started to see the rollback,” said Alex Neve, the secretary general of Amnesty International Canada. “Today the Supreme Court of Canada has said, ‘Make sure you put human rights at the center of how you prevent terrorism.’ ” The security certificate system was introduced in a 1978 immigration law and has been used 27 times, mostly before September 2001. It allows the government to detain people indefinitely if the minister of public safety and the minister of immigration conclude that they are a threat to national security. The certificates, once signed, are reviewed by a federal judge who can rule to keep any or all of the evidence secret.

While Amnesty International and other groups have long campaigned against the certificates, the issue attracted relatively little attention for many years. Historically the certificates were issued against people who were accused of spying in Canada and who were swiftly deported.

The current cases, however, have become more prominent because they generally involve people who have been jailed for years without charges, using secret evidence and, in many cases, without bail.

The sparseness of evidence makes it difficult to assess if there is any connection linking the men. The authorities say they have tied five of them in various ways to Al Qaeda. A sixth was arrested in 1995 and has been out on bail since 1998. He is charged with being a fund-raiser for the Tamil Tigers in Sri Lanka.

Hassan Almrei, a Syrian arrested in Mississauga, Ontario, in 2001, is the only one directly involved in this case who remains in jail.

A document from the Canadian Security and Intelligence Service charges that Mr. Almrei, who entered Canada on false papers in 1999, forged documents for the Sept. 11 attacks and is a member of “an international network of extremist groups and individuals who follow and support the Islamic extremist ideals espoused by Osama bin Laden.” He was also accused of sending money to Mr. bin Laden’s network through a honey and perfume business he ran in Saudi Arabia. The government said that a computer belonging to Mr. Almrei contained images of Mr. bin Laden, guns, a jet cockpit and a security badge.

Like most of the other suspects, Mr. Almrei remains under a certificate because the government’s efforts to deport him to Syria conflict with Canadian laws that ban sending people to places where they are likely to be tortured.

Based on the limited information available, other security certificate cases appear to be circumstantial. Mr. Charkaoui, a Moroccan who was arrested in 2002 and released on house arrest in 2005, is accused of having trained in Afghanistan. "I am innocent," he said Friday. "I was never charged, I was never accused of a crime. If the government has anything to accuse me of, well, there's the criminal code."

Much of the judgment provides a blueprint for Parliament on how to make security certificates fit with Canada's charter of rights and freedoms. As part of that, one of the court's suggestions seems to be adopted from Britain, whose legal system provided the basis of Canada's. After the House of Lords struck down a similar law in 2004, Britain adopted a system that allows security-cleared lawyers to attend the hearings, review the evidence and represent the accused.

A provision of the ruling that is effective immediately requires people held under certificates to receive a bail hearing within 48 hours.

For terrorism suspects in the United States, whose situation is most directly analogous to that of the men in Canada, the legal situation is cloudy at best. In the two years after Sept. 11, 2001, the government detained more than 5,000 foreign citizens.

Most were charged with offenses no more serious than overstaying a tourist visa, and many were held for months, awaiting clearance by the Federal Bureau of Investigation, after they had agreed to leave the country. Not one was convicted of a crime of terrorism.

Judge John Gleeson of Federal District Court in Brooklyn ruled last June on a class-action lawsuit brought by eight detainees. All have left the country and are seeking damages for what they argued was an illegitimate incarceration. Judge Gleeson dismissed that portion of the lawsuit, ruling that the courts should not "encroach on the executive branch in a realm where it has particular expertise" and "legitimate foreign policy considerations."

Even if the plaintiffs could demonstrate that their right to constitutional due process was violated, Judge Gleeson wrote, the officials they sued would be entitled to immunity because any right to "immediate or prompt removal" had not been "clearly established" at the time. The case, *Turkmen v. Gonzales*, is now on appeal.

Dalia Hashad, the United States program director for Amnesty International, said the Canadian decision should serve as "a wake-up call that reminds us that civilized people follow a simple and basic rule of law, that indefinite detention is under no circumstances acceptable."

Linda Greenhouse contributed reporting from Washington, and Christopher Mason from Ottawa.