Charkaoui v. Canada (Citizen and Immigration), 2007 SCC 9.

In May 2003, Adil Charkaoui, a Moroccan citizen, was arrested, He was detained for two and a half years security certificate under the Immigration and Refugee Protection Act. Security certificates are used to detain individuals who are considered to be threats to national security. Charkaoui, along with Algerian Mohamad Harkat and Syrian Hassan Almrei, were detained under security certificates. The three men where never charged with criminal offences. They did not have any connection to each other. They were all accused, however of having ties to al Qaeda and other terrorist groups. They were believed to be a threat to Canada’s security.

A security certificate must be signed by two cabinet ministers. A judge must of the Federal Court must decide if the certificate is “reasonable”. The hearings to determine this are held in secret. Only the judge, government lawyers, and witnesses are present. The detainees and their lawyers are given only a summary of the allegations. They are not given any specific details of the government’s case against them. They are also not allowed to be present at the hearing. Once the security certificate is declared reasonable by the Federal Court judge, the detainee can be deported from Canada on the groups of being a danger to the security of Canada. The decision of the Federal Court judge is final and cannot be appealed.

Charkaoui, Harkat, and Almrei argued that they should be charged with a crime if they are to be detained. Once charged, they should be brough to trial. They challenge the validity of the secret hearings. They also questioned the fact that they were not allowed to have someone present to represent their interests. In December 3003, the Federal Court of Canada declared security certificates lawful. The men appealed to the Federal Court of Appeal. The court was concerned that information released might harm national security. That is why it also upheld the secrete process of reviewing the security certificates.

The men appealed to the Supreme Court of Canada. In the interim, Charkaoui was freed on bail in February 2005, but placed under strict house arrest. Harkat, who had been detained for three and a half years, was freed on bail under strict conditions in June 2006. Almrei, who had eben detained since October 2001, was held at an immigration holding centre and not granted bail.

In 2007, the Supreme Court of Canada struck down parts of the Immigration and Refugee Protection Act. The process for reviewing the validity of a security certificate violated Section 7 of the Charter. So did the procedures for reviewing the detention. The act permitted the use of evidence that was not disclosed to the detainees during secret hearings. That meant that the detainees were not given the opportunity for a fair hearing. The detainees were also denied the right to know the full case against the. Thus, they were not able to make a full defence to the chargers. Under the law, foreign nationals could be detained without a review until 120 days after the security certificate was deemed reasonable. Permanent resident detainees had a review within 48 hours. The court determined that time limits in the professions for continuing detention of a foreign national violated Sections 9 and 10 c of the Charter because they were arbitrary. While the detentions were not arbitrary when they first applied, the court considered it arbitrary to continue the detention without a process of review. The security certificate and detention system was held to be unconstitutional. The court gave the federal government one year to write a new law.

Questions:

1. What was the purpose of a security certificate?
2. What section the charter did the detainees allege was violated by the security certificate system?
3. Why did the detention review procedure violate the Charter?
4. Do you think government – appointed lawyers would fairly represent a suspected terrorist’s interests?