

**OPINION No. 40/2005 (FRANCE)**

**Communication: addressed to the Government on 19 April 2005.**

**Concerning: Mr. Joseph Antoine Peraldi.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 38/2005.)
2. The Working Group conveys its appreciation to the Government for having provided the requested information in good time.
3. (Same text as paragraph 3 of Opinion No. 38/2005.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, which made comments on it. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case, in the context of the allegations made and the response of the Government thereto.

5. According to the information received, Mr. Joseph Antoine Peraldi, born on 11 September 1941, a retiree of French nationality residing at Manicola Vecchia, La Confina No. 1, 20167 Ajaccio-Mezzavia (Corse du Sud, France), was arrested outside his home near Ajaccio on the evening of 26 February 2000 by armed plainclothes policemen, some of whom were hooded, as he was parking his car on returning home. He was taken to a police station and shown a warrant from a rogatory commission headed by Judge Bruguière of the 14th Counter-terrorism Section of the Public Prosecution Service in Paris; the warrant bore no signature or seal. On 27 February 2000, he was placed in custody at the Curzo gendarmerie station. On 28 February 2000, he was transferred by special aeroplane to the premises of the National Counter-terrorism Division in Paris, where he was detained for questioning for four days, plus a further day in the Conciergerie, before being brought before an examining magistrate. On 2 March 2000, he was transferred to Fresnes Prison on the outskirts of Paris, where he remains.

6. He has been charged with complicity in the destruction by explosives on 29 November 1999 of premises in Ajaccio occupied by the *Union de recouvrement des cotisations de sécurité sociale et d'allocations familiales* (Social Security Contributions and Family Allowances Agency, URSSAF) and *Direction Départementale de l'Équipement* (Departmental Public Works Office, DDE) and of criminal association in connection with a terrorist undertaking, charges that he has consistently denied.

7. According to the source, at the time at which his case was submitted to the Working Group Mr. Peraldi had still to be tried on those charges and had been in preventive detention for more than 60 months. Furthermore, three requests for his release made on the grounds of breach of articles 5.3 and 6.1 of the European Convention on Human Rights and article 148.1 of the Code of Criminal Procedure to the Paris Court of Appeal and the Court of Cassation were rejected because his continued detention was allegedly the only means of preventing fraudulent concertation with other persons charged in the case and pressure on witnesses.

8. The source states that on 10 June 2005 Mr. Peraldi's lawyer submitted to the European Court of Human Rights an application under article 34 of the European Convention on Human Rights alleging violation of articles 5.3 and 6.1 of the Convention. The source expresses the view that to hold someone in preventive detention for over 60 months far exceeds what would be reasonable in the light of the right to a fair trial.

9. The Government of the French Republic states in its response that a warrant for Mr. Peraldi's commitment was issued on 2 March 2000, after he had been charged. On 16 April 2002, the criminal investigation having been completed, the investigation chamber of the Paris Court of Appeal confirmed in ten instances the decisions of the Paris liberties and

detention judge concerning preventive detention. Mr. Peraldi filed four applications for release with the investigation chamber; all were denied by judgements of the chamber. One of the judgements was the subject of an application for, and was upheld on judicial review.

10. The Government states that, by a decision dated 15 March 2005, the investigation chamber applied the provisions of article 181, paragraph 9, of the Code of Criminal Procedure and ordered the extension of Mr. Peraldi's detention from 31 March 2005, the committal order having become final on 31 March 2004. It points out that article 181, paragraph 8, of the Code provides that an accused person shall be released if he/she has not been tried within a year of the date on which the committal order becomes final and detention has not been extended for six months by an investigation chamber, and that Mr. Peraldi had appeared before the Paris assize court on 4 April 2005, within the time limit, and that his detention had been extended for six months with effect from 31 March 2005.

11. The Government observes that Mr. Peraldi is charged with involvement in the bomb attacks of 25 November 1999 on the premises in Ajaccio of the DDE and URSSAF. The investigation had revealed the involvement in those attacks of leading figures in the political organization "Corsica Viva" and its armed wing "FLNC du 5 mai". Mr. Peraldi had been identified as the de facto leader of Corsica Viva. The Government emphasizes that both attacks were carried out during the day and not only caused substantial property damage but also injured 71 people, some of them so seriously that they had been totally unable to work for 60 days.

12. The Government states that on 22 April 2005 Mr Peraldi was sentenced to 15 years' rigorous imprisonment and that on 8 June 2005 he was transferred to the Borgo detention centre in Corsica. This is close to his family home, so that he is able to receive visits, including from his wife; in addition, he is able to make telephone calls and, using his computer, to write. The Government is therefore of the opinion that his detention cannot be considered arbitrary.

13. In addition, the Government requests the Working Group to declare the communication inadmissible on the grounds that Mr. Peraldi filed an application with the European Court of Human Rights on 10 January 2005 and that it is established practice that individual communications are inadmissible before committees created under United Nations instruments when the dispute in question has been placed before another international investigatory or settlement body.

14. In reply, the source stresses that Mr. Peraldi was arrested outside his home by hooded men who neither wore armbands nor had blue police lights on their vehicles and who pressed a gun to his head. Three quarters of an hour later, at the police station, he was shown a rogatory commission that bore neither the signature nor the seal of the examining magistrate who had ordered his arrest, a circumstance constituting a procedural defect. He was subsequently incarcerated in Fresnes Prison, after having been held for 96 hours in police custody and 19 hours in the Conciergerie before being brought before an examining magistrate.

15. The source stresses that Mr. Peraldi spent 63 and a half months in prevention detention at Fresnes and that in the 39 months which elapsed between his examination by Judge Bruguière

on 22 December 2001 and his trial he saw no examining magistrate, but only the liberties and detention judge, who renewed the warrant for his commitment every six months, as required by law. Moreover, during those 39 months the examining magistrate ordered no additional enquiries and Mr. Peraldi himself took no legal action that could have delayed the closure of his case other than to file an application with the Court of Cassation for review of his committal for trial by the special assize court.

16. The source confirms that since 9 June 2005 Mr. Peraldi has been held in the Borgo detention centre in Corsica, where he can receive visits, in particular from his wife and family, but states that he has no computer and is not producing any written material. It stresses that Corsica Viva was a public movement with statutes on file at the Ajaccio Prefecture and that Mr. Peraldi was a member of its governing body.

17. The source states in conclusion that Mr. Peraldi was sentenced to 15 years' rigorous imprisonment on the personal conviction of the prosecutor, who stated during the trial that he had no material evidence, and of the police superintendent. The attacks in question, however, were carried out by unknown persons under false names. Mr. Peraldi pleaded not guilty throughout his trial and numerous public figures expressed support for him.

18. As regards the admissibility of the communication, the Working Group notes that on 10 January and 30 March 2005 Mr. Peraldi, who had been in preventive detention since 26 February 2000, filed complaints for violation of the right to be tried within a reasonable time or released with, respectively, the European Court of Human Rights and the Working Group. In its response, the Government requests the Working Group to declare the communication inadmissible on the ground that it is established practice that individual communications are inadmissible before committees created under United Nations instruments when the dispute in question has been placed before another international investigatory or settlement body.

19. On the basis of paragraph 25 of its methods of work, the Working Group does not consider itself precluded from the examination of a communication on the sole ground that an identical or the same application is pending before the European Court.

20. Regarding substance, the source makes several complaints, the one most relevant to the Working Group's mandate being that concerning the right to be tried within a reasonable time or released. The Working Group notes that Mr. Peraldi was under criminal investigation for involvement in attacks in Ajaccio in 1999. It is apparent from the history of the proceedings that the criminal investigation began in March 2000, the examining magistrate issued his committal order on 2 September 2003 and the investigation chamber of the Paris Court of Appeal confirmed Mr. Peraldi's committal for trial by the assize court on 19 December 2003. Mr. Peraldi appealed for judicial review of the committal order, an appeal that the Court of Cassation dismissed on 31 March 2004. On 4 April 2005, Mr. Peraldi was tried before the Paris assize court, which found him guilty and sentenced him to 15 years' rigorous imprisonment.

21. In this regard the Working Group notes that, while the right to a fair trial necessarily implies that justice be done without undue delay, the question what is a reasonable time depends on the circumstances and complexity of each case and, where appropriate, on the use of remedies

and of the right periodically to contest the accused's continued preventive detention. In reaching its decisions, the Working Group proceeds on a case-by-case basis. In the case in question, it is of the opinion that, bearing in mind the nature of the offences and the course of the proceedings, the time taken to bring Mr. Peraldi to trial was not excessive. Furthermore, Mr. Peraldi was able on several occasions to contest his continued preventive detention and the competent authorities concluded against releasing him.

22. The source further alleges that Mr. Peraldi's arrest and transfer to Paris were vitiated by a number of procedural irregularities and formal defects and that he was convicted without the production of physical evidence. The Working Group observes in this regard that it has consistently refrained from taking the place of the judicial authorities or acting as a kind of supranational tribunal when, as in the present case, it has occasion to verify the conditions of the judiciary's application of domestic law. When it examines a communication, it prefers not to query the facts and evidence of the case. It seeks only the observance of the relevant rules of international law and investigates whether the way domestic law has been applied has given rise to a violation of such gravity as to make the detention arbitrary.

23. The Working Group is of the opinion that the alleged procedural defects mentioned by the source, many of which the Government disputed, were not of such gravity as to confer on the deprivation of liberty an arbitrary character.

24. In the light of the foregoing, the Working Group renders the following Opinion:

Mr. Joseph Antoine Peraldi's detention is not arbitrary.

25. Having rendered this Opinion, the Working Group, acting on the basis of paragraph 17 (b) of its revised methods of work, decides to file the case.

Adopted on 28 November 2005.