

April 2009

Peraldi v. France (dec.) - 2096/05

Decision 7.4.2009 [Section V]

Article 35

Article 35-2

Same as matter submitted to other procedure

Complaints previously examined by United Nations Working Party on Arbitrary Detention: *inadmissible*

In 1999 two bomb attacks were carried out in Corsica, resulting in injury to nineteen persons. The applicant was placed under investigation and taken into detention. His pre-trial detention was extended on numerous occasions, for a total of about six years. During this period he submitted several applications for release, all of which were dismissed. By a final judgment of April 2005 an assize court sentenced him to fifteen years' imprisonment. In March 2005 his brother applied to the United Nations Working Group on Arbitrary Detention (hereafter "the Working Group"). In his communication, he complained of the applicant's arbitrary detention and alleged that the length of his pre-trial detention had exceeded a reasonable time. The Working Group issued an opinion in which it considered that the applicant's pre-trial detention had not been arbitrary.

Inadmissible: The applicant had applied to the Court through his lawyer in January 2005. In March 2005 the applicant's brother wrote to the Working Group, which concluded in an opinion of November 2005 that the applicant's pre-trial detention had not been arbitrary. Under the Convention, which sought to avoid a plurality of international proceedings relating to the same cases, the Court could not deal with any application which had already been investigated by an international body. This rule applied irrespective of the date on which those proceedings were lodged, as the element to be taken into consideration was the prior existence of a decision on the merits at the date on which the Court examined the case.

The Court had to determine whether the present application was "essentially the same" as that submitted to the Working Group where the facts, the parties and the complaints were identical. It was his brother and not the applicant himself who had applied to the Working Group. In principle, where the persons submitting complaints to the two bodies were not the same, the application received by the Court could not be considered as essentially the same as an application already submitted to another international body. In the instant case, however, although the applicants in the two cases were different from a formal point of view, the applicant's brother had submitted an application to the Working Group requesting it to examine the applicant's situation rather than his own. In addition, the two applications concerned the applicant's pre-trial detention and its allegedly abusive nature. The Working Group had ruled on the issue of whether the applicant's detention was arbitrary on the basis of numerous elements, mainly that of the length of the pre-trial detention. Its examination had thus covered the complaints submitted by the application to the Court. It followed that the facts, parties and complaints were identical.

In addition, the Court had to determine whether the application had already been submitted to "another procedure of international investigation or settlement". The Working Group was an extra-conventional mechanism made up of independent experts and leading figures specialising in human rights. The communications procedure to the Working Group differed clearly from the complaints filed under the UN's "1503 procedure", which had been considered by the Court not to correspond to a procedure of international investigation or settlement. The examination conducted in the context of the "1503 procedure" concerned the human-rights situation in a specific country rather than individual complaints, and its objective was not to offer direct reparation to victims. In contrast, the Working Group could accept individual applications, and the individuals submitting those applications were entitled to take part in the proceedings and to be informed of the opinions issued by it. The Working Group's opinions, which were accompanied by recommendations to the government concerned if it considered that the detention was arbitrary, were appended to the annual report transmitted to the Commission on Human Rights (since 2006, the special procedures had been taken over by the Human Rights Council, created to replace the Commission), which in turn could adopt resolutions and address recommendations to the General Assembly of the United Nations through the intermediary of the Economic and Social Council. It followed that the procedure before the Working Group was akin, from both a procedural perspective and in terms of its potential impact, to the individual application provided for by Article 34 of the Convention. Accordingly, although the Working Group had not been created by a treaty but by a resolution of the Commission on Human Rights, it was nevertheless a body whose proceedings were adversarial and whose decisions were reasoned, notified to the parties and published in an appendix to its report. In addition, its recommendations made it possible to determine State liability in cases where arbitrary detention was found, and even to put an end to the impugned situations. Its opinions were also subject to a monitoring procedure for the purpose of ensuring that the recommendations contained in them were implemented. The procedure before the Working Group had many similarities to that before the United Nations Human Rights Committee, which, under the Court's settled case-law, represented a procedure of international investigation or settlement. Consequently, the Working Group was a procedure of international investigation or settlement within the meaning of Article 35 § 2 (b) of the Convention. Thus, given that the complaint submitted to the Court was essentially the same as that which resulted in the above-mentioned opinion from the Working Group, the Government's objection of inadmissibility was to be accepted.

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