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International Covenant on Civil and Political Rights

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Human Rights Committee

Communication No. 2390/2014

Decision adopted by the Committee at its 111th session (7–25 July 2014)

Submitted by:	Elena Pronina (not represented by counsel)
Alleged victim:	The author
State party:	France
Date of communication:	19 January 2014 (initial submission)
Date of decision:	21 July 2014
Subject matter:	Dismissal order (refusal to initiate criminal proceedings)
Substantive issues:	Right to a fair trial; right to an effective remedy
Procedural issues:	Consideration of the same matter by another international jurisdiction; State party's reservation; insufficient substantiation of claims
Articles of the Covenant:	2 (paras. 1 and 3) and 14 (para. 1)
Articles of the Optional Protocol:	2 and 5 (para. 2 (a))

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Decision on admissibility*

1.1 The author of the communication is Elena Pronina, a Russian citizen born in 1955, who claims that France has violated her rights under article 2, paragraphs 1 and 3, and article 14, paragraph 1, of the International Covenant on Civil and Political Rights. She is not represented by counsel.

1.2 On 16 May 2014, the Special Rapporteur on new communications and interim measures, acting on behalf of the Committee, decided that it was not necessary for the State party to submit its observations in order for the Committee to rule on the admissibility of the communication.

The facts as submitted by the author

2.1 On 27 November 2002, the author filed a complaint with the senior investigating judge of the Paris *Tribunal de Grande Instance* (court of major jurisdiction) in which she claimed to have been the victim of fraud and breach of trust on the part of the BNP-Paribas bank. She accused the bank of using her securities account to carry out stock exchange transactions without her prior consent in some cases and against her instructions in others. On 22 January 2003, she further developed her complaint at a hearing before the senior investigating judge of the Paris court. On 20 March 2003, the investigative judge in charge of the case issued instructions to the police to investigate the author's allegations by 1 August 2003.

2.2 On 17 September 2003, the investigating judge of the Paris court sent a reminder to the Directorate of Police, which had requested documents from the bank on 20 August 2003. On 11 October 2004, the author's lawyer requested the investigating judge to order further inquiries. On 14 October 2004, the investigating judge denied the request for further inquiries, noting that "the bank had apparently abided by standard practice in this respect" and that "if the party claiming damages [the author] considered that BNP-Paribas had breached the terms of their agreement, then it was a civil rather than a criminal matter". On 10 February 2005, the investigating judge had an employee of the bank and the author make a joint appearance and requested the bank to provide supporting documentation, including the author's account statements; the bank allegedly ignored this request. On 20 April 2005, the investigating judge informed the parties that, pursuant to article 175 of the Code of Criminal Procedure, the case would be referred to the public prosecutor's office.

2.3 On 4 May 2005, the author's lawyer petitioned the investigating judge to order an outside audit, request a hearing with senior staff of the bank's inspectorate-general and instruct the bank to produce various documents, pursuant to article 175 of the Code of Criminal Procedure. The investigating judge denied the petition on 23 May 2005 on the grounds that it was "not appropriate in a criminal case and would not help to uncover the truth". On 30 May 2005, the author's lawyer filed an appeal against the denial of the petition with the Paris Court of Appeal. According to the author, that court never ruled on this appeal. On 1 July 2005, the investigating judge dismissed the case, stating that there was "insufficient evidence that anyone had committed fraud or breach of trust". On 6 July

* The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Lazhari Bouzid, Ahmed Amin Fathalla, Cornelis Flinterman, Yuji Iwasawa, Walter Kälin, Zonke Zanele Majodina, Gerald L. Neuman, Sir Nigel Rodley, Víctor Manuel Rodríguez-Rescia, Fabián Omar Salvioli, Dheerujlall B. Seetulsingh, Anja Seibert-Fohr, Yuval Shany, Konstantine Vardzelashvili, Margo Waterval and Andrei Paul Zlătescu.

Pursuant to rule 90 of the Committee's rules of procedure, Christine Chanet did not participate in the consideration of this communication.

2005, the author's lawyer appealed against the dismissal order. On 3 February 2006, the Court of Appeal upheld the dismissal, stating that the "information adduced had not substantiated the charges brought by the party claiming damages and the acts in question could not be qualified as any other criminal offence". On 3 February 2006, the author lodged a notice of appeal for judicial review (cassation). On 27 September 2006, the Court of Cassation rejected it, stating that there was "no basis upon which to admit the application". On 10 February 2010, the author filed another notice of appeal with the Court of Cassation on the basis of new evidence, i.e., an audit of her investments with the bank which she had commissioned from Britannia Accountancy Services. According to the author, the auditors had found evidence of fraud and fraudulent operations on the part of the bank. On 12 February 2010, the Court of Cassation refused the second notice of appeal.

2.4 On 29 May 2009, the author filed a complaint with the European Court of Human Rights. On 15 September 2009, a three-judge panel of the European Court ruled that the complaint was inadmissible because it did not disclose any appearance of a violation of the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter "European Convention on Human Rights") and the Protocols thereto. On 2 June 2010, the author filed another complaint with the European Court of Human Rights. On 3 November 2011, another judge of the European Court of Human Rights ruled that the complaint was inadmissible on the same grounds.

The complaint

3. The author contends that her rights under article 2, paragraphs 1 and 3, and article 14, paragraph 1, of the Covenant have been violated because she has been denied her right to an effective remedy, particularly since the appeals court has failed to rule on her appeal of 30 May 2005. She further contends that the reasoning on which the dismissal order was based is flawed and that the French authorities ignored her requests and those of her lawyers and did not provide sufficient justification for their denial of her petitions.

Issues and proceedings before the Committee

4.1 Before considering any claim contained in a communication, the Human Rights Committee must decide whether the communication is admissible under the Optional Protocol to the Covenant.

4.2 The Committee notes that on 15 September 2009, a three-judge panel of the European Court of Human Rights found that the author's complaint, which had been filed against France and which dealt with the same facts as those addressed in this communication, was inadmissible. In explaining its reasoning, the European Court of Human Rights noted that the complaint did not disclose any appearance of a violation of the rights or freedoms set forth in the European Convention on Human Rights and the Protocols thereto. The Committee further notes that, on 3 November 2011, another judge of the European Court of Human Rights found that the second complaint filed by the author against France, which regarded the same facts as those under consideration here, was inadmissible as well. The Committee notes that the State party filed the following reservation when it acceded to the Optional Protocol: "France makes a reservation to article 5, paragraph 2 (a), specifying that the Human Rights Committee shall not have competence to consider a communication from an individual if the same matter is being examined or has already been considered under another procedure of international investigation or settlement."

4.3 The Committee recalls its jurisprudence, according to which "same matter" refers to a petition that concerns the same individuals, facts and substantive rights.[1] Given that the European Court of Human Rights ruling that the complaint was inadmissible was based not only on procedural grounds but also on the merits, the Committee finds that the same matter has been "considered" within the meaning of the reservation to article 5, paragraph 2 (a), of the Optional Protocol.[2] In the present case, the European Court of Human Rights went beyond an examination of purely procedural criteria of admissibility and ruled that the complaint was inadmissible because it did not disclose any appearance of a violation of the provisions of the European Convention on Human Rights.

4.4 The Committee further observes that, despite certain differences in the Court's interpretation of article 6, paragraph 1, of the European Convention on Human Rights and the Committee's interpretation of article 14, paragraph 1, of the Covenant, both the content and scope of these provisions largely converge.[3] In the light of the similarity of the two provisions and the State party's reservation, the Committee considers itself precluded from reviewing a finding of the European Court of Human Rights on the applicability of article 6, paragraph 1, of the European Convention on Human Rights by referring to its jurisprudence under article 14, paragraph 1, of the Covenant. The Committee accordingly finds this part of the communication inadmissible under article 5, paragraph 2 (a), of the Optional Protocol, as the same matter has already been considered by the European Court of Human Rights.

4.5 Regarding the complaint submitted under article 2, paragraphs 1 and 3, of the Covenant, the Committee recalls that this article can be invoked only in conjunction with another article of the Covenant which concerns a substantive right protected by the Covenant[4] and only if the claim that this right has been violated has been sufficiently well-founded to be arguable under the Covenant.[5] Therefore, the Committee deems this part of the communication inadmissible under article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under article 2 and article 5, paragraph 2 (a), of the Optional Protocol;

(b) This decision shall be transmitted to the State party and to the author.

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[1] See, for example, communication No. 998/2001, *Althammer et al. v. Austria*, Views adopted on 8 August 2003, para. 8.4.

[2] See, for example, communication No. 121/1982, *A.M. v. Denmark*, inadmissibility decision adopted on 23 July 1982, para. 6, referring to a decision of the European Commission of Human Rights, which was succeeded by the European Court of Human Rights. Also see communication No. 744/1997, *Linderholm v. Croatia*, decision on admissibility adopted on 23 July 1999, para. 4.2.

[3] See, for example, communication No. 989/2001, *Kollar v. Austria*, inadmissibility decision adopted on 30 July 2003, para. 8.6.

[4] See, for example, communication No. 275/1988, *S.E. v. Argentina*, inadmissibility decision adopted on 26 March 1990, para. 5.3.

[5] See, for example, communication No. 972/2001, *Kasantzis v. Cyprus*, inadmissibility decision adopted on 7 August 2003, para. 6.6.