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HUMAN RIGHTS COMMITTEE
Ninetieth session
9-27 July 2007

RECOMMENDATION

Communication No. 1384/2005

Submitted by:	Robert and Marie-Françoise Petit (represented by counsel, Alain Garay)
Alleged victim:	The authors
State party:	France
Date of communication:	1 November 2004 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 15 April 2005 (not issued in document form)
Date of decision:	24 July 2007
Subject matter:	Challenge to the amount paid in compensation for grubbing-up vines

* Made public by decision of the Human Rights Committee.

Procedural issues:	Previous examination by the European Court of Human Rights
Substantive issue:	Right to a fair trial
Articles of the Covenant:	14 and 15
Articles of the Optional Protocol:	5, paragraph 2 (a)

[ANNEX]

Annex

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Ninetieth session

concerning

Communication No. 1384/2005*

Submitted by:	Robert and Marie-Françoise Petit (represented by counsel, Alain Garay)
Alleged victim:	The authors
State party:	France
Date of communication:	1 November 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 24 July 2007,

Adopts the following:

Decision on admissibility

1. The authors of the communication, dated 1 November 2004, are Robert and Marie-Françoise Petit, French nationals. They claim to be victims of violations by France of articles 14 and 15 of the International Covenant on Civil and Political Rights. They are represented by counsel, Alain Garay. The Covenant and the Optional Protocol thereto entered into force for France on 4 February 1981 and 17 May 1984 respectively.

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* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Mr. Yuji Iwasawa, Mr. Edwin Johnson Lopez, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Mr. Michael O'Flaherty, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley and Mr. Ivan Shearer.

Pursuant to rule 90 of the Committee's rules of procedure, Committee member Ms. Christine Chanet did not participate in adoption of the Committee's decision.

Factual background

2.1 In 1965, Mr. Petit took an emphyteutic lease on some plots of land in Corsica with Ms. Corteggini, the landowner. The author, who had planted vines on the land, decided to grub them up, and this entitled him to European Community assistance in the form of a grubbing-up premium allocated by the Office National Interprofessionnel des Vins (ONIVINS). Grubbing-up the vines, according to ONIVINS, required the agreement of the owner. The owner made her agreement conditional on having part of the premium paid to herself ("a sum of 300,000 francs applying to 50 per cent of the premium"), and concluded a contract to this effect with the author on 15 May 1991. The Albaretto Estate, of which the author is the founder and sole partner, received a grubbing-up premium in proportion to its yield. The premium was paid into Ms. Petit's account on 30 December 1992, but no payment was made to the owner, who filed a complaint against the authors.

2.2 On 8 April 1998, the investigating magistrate in charge of the case, Ms. Spazzola, referred it to the criminal court. On 1 December 1998, the High Court of Bastia, ruling as a criminal court, found Mr. Petit guilty of abuse of trust and fraud, and Ms. Petit guilty of possession of an item obtained by abuse of trust. In contravention of domestic law, one of the judges trying the case in the High Court was the same Ms. Spazzola who had acted as investigating magistrate in the case.

2.3 In a ruling dated 15 December 1999, the Court of Appeal of Bastia upheld the guilty verdict against the authors, but found that the offence described as fraud in fact constituted an abuse of trust. It appears from the ruling that, in contravention of domestic law, two of the magistrates acting in the proceedings were husband and wife, one representing the Public Prosecutor's Office (Mr. Mesclet, counsel), and the other (Ms. Mesclet) sitting as a judge. In a ruling dated 18 October 2000, the criminal division of the Court of Cassation rejected an appeal by the authors, stating that the ground of the appeal, namely that both Mr. and Ms. Mesclet had acted in the case, was based on a purely technical error in the reference material accompanying the ruling.

2.4 The authors filed an initial application with the European Court of Human Rights (case registered as No. 27582/02). On 21 September 2004, the Court declared the application inadmissible on the grounds that "the Court has not identified any indication of a violation of the rights and freedoms guaranteed by the Convention or its Protocols".

2.5 In separate proceedings, the Albaretto Estate claimed that a higher premium was payable because of a mistake over the yield. On 23 June 1993, ONIVINS rejected this claim. On 11 August 1993, the Albaretto Estate applied to the Administrative Tribunal of Paris for this decision to be quashed. The case was transferred, first to the Council of State, then to the Administrative Tribunal of Bastia, which rejected the application on 22 October 1998. On 11 April 2002, the Administrative Appeal Court of Marseille upheld the decision of the Bastia Tribunal. On 19 March 2003, the Council of State denied the Albaretto Estate permission to appeal, stating that none of the grounds for appeal it advanced would make the case admissible.

2.6 On 23 August 2002, Mr. Petit filed a second application with the European Court of Human Rights on behalf of the Albaretto Estate (case registered as No. 41247/02). In this application, he complained of the excessive length of the proceedings before the administrative

courts. The application was resolved by a friendly settlement formally recorded in a decision of the Court dated 1 June 2004, thus bringing the proceedings to a close. The decision sets out the terms of the settlement, including the following statement by the author:

> "I note that the French Government is prepared to pay me the sum of 7,000 (seven thousand) euros by way of friendly settlement in the matter arising from the above-mentioned application with the European Court of Human Rights.
>
> "I accept this offer and also renounce any other claim against France in connection with the facts behind this application. I declare this case to be definitively settled.
>
> "The present statement forms part of the friendly settlement reached between the Government and myself."

2.7 Meanwhile, Mr. Petit submitted a third application to the European Court of Human Rights on his own behalf and on behalf of the Albaretto Estate (case registered as No. 36883/03). Here he complained of a violation of article 6 of the Convention on the grounds that no reasons were given for the Council of State's decision of 19 March 2003 and that the procedure for considering applications to appeal was unfair. He alleged a violation of article 13 of the Convention since no effective remedy had been available to him. He also alleged a violation of article 1 of Protocol No. 1 to the Convention because the premium for grubbing-up was too low. On 25 January 2005, the Court ruled this application inadmissible on the grounds that it could not "identify any indication of a violation of the rights and freedoms guaranteed by the Convention or the Protocols thereto".

The complaint

3.1 The authors claim to be victims of a violation of article 14 of the Covenant. They state that the irregular composition of the High Court and Court of Appeal of Bastia was incompatible with the principles of impartiality and a fair hearing protected under article 14 of the Covenant on Civil and Political Rights.

3.2 The authors claim a violation of article 15 of the Covenant because they were found guilty of breach of trust under article 408 of the former Criminal Code, instead of article 314-1 of the new Criminal Code.

3.3 The authors complain that the legal proceedings in the administrative courts over the grubbing-up premium that they contested with ONIVINS were unreasonably lengthy: the case was referred to the administrative tribunal in Bastia in February 1994, but the Council of State did not reach a final decision until March 2003. They assert that the procedure whereby applications to appeal on points of law to the Council of State are or are not accepted is unfair and obscure, and they consider this to be a violation of their right to an effective remedy under article 14 of the Covenant. They consider that ONIVINS did not take their comments into account. Lastly, they contend that the small size of the grubbing-up premium they received demeaned their property.

3.4 The authors state that they have exhausted all domestic remedies. The authors also claim that the European Court of Human Rights has not "examined" their case within the meaning of article 5, paragraph 2 (a), of the Optional Protocol and the State party's reservation.

3.5 The authors request damages in compensation for the injury they have suffered.

State party's observations on admissibility

4.1 On 15 June 2005, the State party disputed the admissibility of the communication. Firstly, it points out that it has entered a reservation in relation to article 5, paragraph 2 (a), of the Optional Protocol, and refers to the Committee's case law on this type of reservation.[1] It notes that the case concerns the same individuals as did the case before the European Court of Human Rights and that they are invoking the same substantive rights before the Committee. The authors put forward no new facts beyond those already set out in their application to the Court, and are simply bringing the same complaint before a different international authority. The State party's reservation therefore applies in this case.

4.2 The State party takes the view that the complaints under articles 14 and 15 have already been examined by the European Court of Human Rights, which did not "identify any indication of a violation of the rights and freedoms guaranteed by the Convention or its Protocols" in its decision of 21 September 2004 (complaint No. 27582/02).

4.3 In a note verbale of 16 January 2007, the State party points out that the part of the complaint that refers to the unreasonable length of the proceedings was resolved through a friendly settlement (with the assistance of the European Court, complaint No. 41247/02). It therefore concludes that this part of the communication is inadmissible.

4.4 The State party stresses that the other complaints relating to the proceedings over the amount of the grubbing-up premium have already been examined by the European Court of Human Rights, which did not "identify any indication of a violation of the rights and freedoms guaranteed by the Convention or its Protocols" in its ruling of 25 January 2005 (complaint No. 36883/03).

Authors' comments

5.1 In their comments of 20 January 2007, the authors insist that the State party's reservation does not apply because the European Court of Human Rights has not "examined" the substance of their complaints.

Issues and proceedings before the Committee

6.1 Before considering any claims contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

[1] See communication No. 998/2001, *Althammer v. Austria*, Views adopted on 8 March 2003, para. 8.4.

6.2 In accordance with article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that two similar complaints filed by the authors were found inadmissible by the European Court of Human Rights on 21 September 2004 (complaint No. 27582/02) and 25 January 2005 (complaint No. 36883/03). In those two decisions, the Court "did not identify any indication of a violation of the rights and freedoms guaranteed by the Convention or its Protocols". The Committee recalls that at the time it subscribed to the Optional Protocol, the State party entered a reservation to article 5, paragraph 2 (a), of the Optional Protocol, specifying that the 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". The Committee notes that the European Court of Human Rights has already "examined" this case within the meaning of article 5, paragraph 2 (a), insofar as its decisions of 21 September 2004 and 25 January 2005 were not solely concerned with procedural issues.[2]

6.3 The Committee notes that the only complaint not examined by the European Court of Human Rights, which concerned the unreasonable length of proceedings (complaint No. 41247/02), was resolved by a friendly settlement formally recorded by the Court in a decision dated 1 June 2004. This complaint had been lodged with the Court on behalf of the Albaretto Estate. The Committee also notes, however, that Mr. Petit signed the statement of friendly settlement (see paragraph 2.6 above). In these circumstances, the Committee believes that, even though Mr. Petit might have signed the statement on behalf of the Albaretto Estate, it would seem that, from his use of the first person, he was also giving his personal undertaking to respect the friendly settlement. The Committee concludes that the European Court of Human Rights has already "examined" this complaint adequately within the meaning of article 5, paragraph 2 (e) and that the State party's reservation is applicable in this instance.

7. The Human Rights Committee therefore decides:

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

(b) That this decision shall be transmitted to the State party and to the authors.

[Adopted in English, Spanish and French, the French text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report.]

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[2] See communication No. 944/2000, *Mahabir v. Austria*, decision on inadmissibility adopted on 24 October 2004, para. 8.3; communication No. 990/2001, *Irschik v. Austria*, decision on inadmissibility adopted on 19 March 2004, para. 8.4; communication No. 1002/2001, *Wallmann v. Austria*, Views adopted on 1 April 2004, paras. 8.5 to 8.7; and communication No. 1396/2005, *Rivera Fernández v. Spain*, decision on inadmissibility adopted on 28 October 2005, para. 6.2.