HUMAN RIGHTS COMMITTEE

Morael v. France

Communication No. 207/1986

28 July 1989

VIEWS

Submitted by: Yves Morael (represented by Alain Lestourneau)

Alleged victim: The author

State party concerned: France

Date of communication: 5 June 1986 (date of initial letter)

Date of decision on admissibility: 10 July 1987

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

Meeting on 28 July 1989,

Having concluded its consideration of communication No. 207/1986, submitted to the Committee by Yves Morael under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and by the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1.1 The author of the communication (letters dated 5 June 1986 and 13 February 1987) is Yves Morael, a French citizen born in France in 1944, at present residing in Paris. He claims to be a victim of violations by France of article 14 (1) and (2) and articles 26 and 17 (1) of the International Covenant on Civil and Political Rights. He is represented by counsel.

1.2 The author states that he is a businessman, and a former member of the board and, later, managing director of the joint stock company "Sociate anonyme des cartonneries mecaniques du Nord" (SCMN), which was a producer of paper and cardboard, that had employed almost 700 persons in 1974. As a consequence of the oil crisis in 1973 and because of increased competition in the sector, the company suffered serious financial losses and, by decision of 24 May 1974 of the Tribunal of Commerce of Dunkirk, it was placed under judicial supervision (réglement judiciaire). On 25 June 1975, the same Tribunal ordered the sale of assets (liquidation des biens sociaux), an order upheld by the Court of Appeal of Douai 12 July 1975. On 11 July 1977, the Court of Cossation quashed the order, but on 3 July 1978 the Court of Appeal of Amiens, in its turn, ordered the sale to proceed. In the meantime, the company had resumed its activities.

1.3 The author further states that, as a shareholder (owning 3.16 per cent of the company's shares) and as a member of the board of directors of the company since 1978, he repeatedly criticized the policies of the then Managing Director and informed the other shareholders of his written protests in order to bring the serious situation to their attention. On 28 February 1979, the author resigned from his position as a member of the board. On 30 June 1979, the then Managing Director resigned and the author was named his successor by the general meeting of shareholders, effective 1 July 1979. Immediately thereafter, he took a number of measures designed to save the company, including closing the Paris office, reducing his salary as Managing Director by 33 per cent and increasing the sales price of the company's products. These measures enabled the author to obtain a court order for temporary suspension of proceedings (suspension provisoire de poursuites) on 30 November 1979. However, when the author sought to reduce the number of employees by approximately 10 per cent (54 posts), the Inspectorate of Employment refused permission in most cases and a series of strikes ensued, further increasing the company's losses. The author ceased to act as Managing Director on 7 December 1979, and a temporary judicial administrator was appointed. On 24 January 1980, the Tribunal of Commerce of Dunkirk appointed another judicial administrator, Mr. Deladriere, who had previously been on the board of SCMN, and who, according to the author, had rendered the company's long-term prospects of survival very precarious by failing to reinvest or modernize during his appointment. More importantly, the author claims that it was during Mr. Deladriere's appointment (1980-1983), that the company's liabilities surpassed its assets, that Mr. Deladriere sold certain company assets at a price significantly below their market value, and that he failed to disengage the company from the obligation of paying FF 16,038,847 to ASSEDIC (employment insurance) after the cessation Of production in January 1980. The author states that Mr. Deladriere brought both civil and criminal proceedings against him and claims that the allegations in the criminal proceedings were false and defamatory; he adds that he was duly acquitted by the Tribunal correctionnel of Dunkirk on 5 March 1982. He also states that similar allegations of misuse of company funds, which were subsequently dismissed in the criminal proceedings, had been improperly introduced in the civil proceedings by the Public Prosecutor (Ministere public) in the hope of rebutting his claim that he had exercised due diligence in the management of the company, and that the Tribunal of Commerce had thus been misled. Moreover, the author claims that the Tribunal of Commerce erred in taking a decision against him without waiting for the judgement of the criminal court on the facts since a civil action must be stayed while a criminal action is being prosecuted (le criminel

tient le civil en l'etat).

1.4 By judgement of 7 July 1981, the Tribunal of Commerce of Dunkirk found that the author had failed to prove due diligence and ordered him to pay 5 per cent of the company's debts, which according to the accounts presented to the Tribunal by the court-appointed administrator amounted in 1981 to FF 957,040, since the company's debts, including the ASSEDIC payments, were set at FF 19,140,814.

1.5 The author alleges that the former French bankruptcy law, which was applied to him, unjustly placed a presumption of fault on the defendant (article 99of Act No. 67-563) and observes that the French Parliament amended it on 25 July 1985 (effective 1 January 1986) eliminating that presumption of fault. However, he did not benefit from the application of the revised law.

1.6 The author appealed the judgement of the Tribunal of Commerce of Dunkirk, claiming that a number of procedural errors had been committed by the lower court and requesting a finding that he had exercised all due diligence during his five months as Managing Director, and that he was not liable for any part of the company's debts. In particular, he cited the misuse of influence by the Public Prosecutor, who was allowed, in the civil proceedings, to allude to accusations brought against him in the Tribunal correctionnel and to introduce evidence stemming from the criminal proceedings, in violation of article 11 of the French Code of Criminal Procedure. In its order of 13 July 1983, the Court of Appeal of Douai, after finding that the author had taken several measures in an effort to save the company but had not succeeded, held him liable for the company's debts, application of the presumption of fault incorporated in article 99 of the old bankruptcy law. Furthermore, the Court of Appeal did not limit itself to confirming the lower court's judgement that the author should pay 5 per cent of the company's debts in 1981, or FF 957,040, and amended that judgement ex officio by ordering him to pay FF 3 million. The author notes that he had appealed in order to extinguish his liability and that the court-appointed administrator had asked the Court of Appeal merely to confirm the lower court's judgement. Notwithstanding, the Court of Appeal amended the judgement in two ways, first, by basing itself on a financial statement dated 15 February 1983, showing considerable higher net indebtedness (FF 30 million instead of the FF 19,140,814 in 1983 and, secondly, by increasing his share of liability from 5 per cent (FF 1.5 million) to 10 per cent (FF 3 million). The author then appealed to the Court of Cassation, contending that the Court of Appeal, while acknowledging his efforts, had erred in finding that he had not exercised due diligence. The author argued that an officer of a company can be required only to take measures but not to guarantee the result. Moreover, the author claimed that he could only be held responsible, if at all, for debts arising during his term as Managing Director, whereas neither the lower court nor the Court of Appeal had ever established what had been the company's debts on 1 July 1979, when he became Managing Director, and on 7 December 1979, when he resigned. There was thus no proof that the company's debts had increased under his management and hence no legal basis for his condemnation. The author further claimed that the Court of Appeal had infringed article 16 of the new Code of Civil Procedure in basing itself on liabilities significantly higher than those established by the lower court, without subjecting the new elements to adversary proceedings. That article reads:

"The court must, in all circumstances, ensure the observance of, and itself observe, the principle of adversary proceedings."

"In its decision, it may not admit grounds, explanations and documents relied upon or produced by the parties unless they have been available to the parties for contradictory debate."

"It may not base its decision on grounds it has raised ex officio with having invited the parties to present their observations."

The author notes that at no time in the appeal proceedings were the parties give an opportunity to present their observations on the higher indebtedness figures on his own share of liability. On 2 May 1985, the Court of Cassation rejected the author's appeal.

2.1 With respect to article 14 (1) of the Covenant, the author calls into quest the French legal system, which, as it was applied to him, did not guarantee a fair hearing, in particular because there was no "equality of arms" in the procedure whereby companies are placed under judicial supervision and because article 99 Act No. 67-563 placed an unfair presumption of fault on company officers without requiring proof of their actual misconduct. In this connection, the author contends that the Court of Cassation wrongly interpreted the concept of due diligence by concluding that any fault committed by the author necessarily excluded diligence, even if he had not shown negligence in the exercise of his duties. The author claims that this excessively severe interpretation of "due diligence" is discriminatory against company officials, for whom an error of judgement regarding economic developments is punished as if constituting negligence. Placing an obligation on him to achieve a desired result, the author argues, was tantamount to denying him any possibility of establishing that he had in fact exercised due diligence. The author claims that it is grossly unfair to hold him responsible for the company's financial condition, which was already disastrous at the time he was appointed Managing Director and which he sought to remedy by diligent efforts that were finally frustrated by factors beyond his control, such as the refusal by the Inspectorate of Employment of staff retrenchment measures and the ensuing strikes.

2.2 Another alleged violation of article 14 (1), the author claims, consisted in the court's consideration of a new and higher amount for the company's liabilities without giving him an opportunity to challenge it. He further contends that the case was not heard within a reasonable time, considering that the Tribunal of Commerce of Lille appointed its administrator in January 1980 and the final decree of the Court of Cassation was not handed down until May 1985. The author claims that had the procedure been more expeditious, the level of the company's debts would have been lower, especially as employees had been paid FF 16,038,847 even after the company had ceased operations in January 1980.

2.3 With respect to article 14 (2), the author contends that article 99 of Act No. 67-563 had not only a civil but also a penal character, and he refers in this connection to the fact that the Public Prosecutor (Ministere public) was heard during the proceedings before the Tribunal of Commerce of Dunkirk. He further contends that the decision by the Court of Appeal

ordering him to pay FF 3 million francs amounts to a penal sanction. He therefore claims that he should have enjoyed the presumption of innocence.

2.4 The author states that to the extent that he was a victim of violations of article 14 by not having been given a fair hearing, he was also denied the equal protection of the law, as provided by article 26 of the Covenant. This, he claims, also constitutes a violation of article 17 (1), in that there was an attack on his honour and reputation, in particular that the proceedings against him tarnished his reputation as a company officer and that he is now prohibited by the bankruptcy law from exercising many managerial functions.

2.5 Lastly, the author emphasizes the fact that he was a victim of violations of the Covenant subsequent to the entry into force of the Optional Protocol for France (17 May 1984).

3. By its decision of 1 July 1986, the Working Group of the Human Rights Committee, acting under rule 91 of its provisional rules of procedure, transmitted the communication of Yves Morael to the State party, requesting any information and observations relevant to the question of the admissibility of the communication.

4.1 In a communication dated 1 December 1986 the State party concedes that the author has "exhausted all domestic remedies within the meaning of article 5, paragraph 2 (b), of the Optional Protocol" With regard to the argumentation of the author and the merits of his claims, the State party contends that the author's communication should be rejected as "manifestly ill-founded".

4.2 The State party rejects the author's contention that the French courts did not decide the case within a reasonable time, pointing out that the Tribunal of Commerce delivered its judgement on 7 July 1981 and the Court of Appeal announced its decision on 13 July 1983, upheld by the Court of Cassation on 2 May 1985.

Given the complexity of the case and the fact that Mr. Morael used all the remedies permitted by French law for such proceedings without displaying particular eagerness, the courts, which were called upon to reach a decision on three occasions in this case within a total period of less than four years, have acted with all due dispatch.

4.3 With regard to the author's assertion that he was not given a fair hearing owing to the presumption of fault established by article 99 of the then applicable Act of 13 July 1967, the State party quotes the text of the Act:

"When judicial supervision of the affairs of a body corporate or the sale of its property reveals that its assets are insufficient, the court may decide, on the petition of the court-appointed administrator, or even ex officio, that the company's debts shall be borne, in whole or in part and jointly or severally, by all or some of the managers of the company, whether de jure or de facto, visible or undisclosed, remunerated or not. To be absolved of their liability, such persons must show that they devoted all due energy and diligence to the management of the company's affairs."

And the state party adds that "this procedure, commonly known as an action for coverage of liabilities, thus introduces in respect of a company's managers or some of them, a presumption of liability, there being a shortfall in assets resulting from the failure of their management".

4.4 "In the view of the French Government, this presumption of liability attached to a company's managers is not in conflict with the principle of a fair hearing, contrary to the contention of the author. Admittedly, the liability of the persons concerned may be invoked in this type of procedure without presentation of proof of fault on the part of the managers. But that is the case in any system of liability for risk or 'objective' liability. Furthermore, the existence of such a presumption instituted by the Act is not, in itself, in any way contrary to the rule of a fair hearing inasmuch as the proceedings take place in conditions that ensure the full enjoyment of his rights by the person concerned. What is more, in the case in question, this presumption is not irrefragable, for the managers in question can in fact absolve themselves of liability by proving by whatever means that they devoted all due energy and diligence to the management of the company's affairs. The tribunal, itself supervised by the Court of Appeal, is free to evaluate such proof in the light of all the elements which had an influence on the behaviour of the managers involved."

4.5 "It is for [the tribunal] to decide, on the petition of the receiver (syndic) or ex officio, to make all or some of the company's managers, jointly or severally assume all or part of the company's liabilities. The tribunal is under no compulsion whatsoever to find against the persons involved. If it does so it is free to determine the amount of the obligation assessed to the managers at fault, on the sole condition that in its decision it does not exceed the amount of the shortfall in assets. It is also free to decide on the advisability of making the managers jointly liable. In short, an action for coverage of liabilities in no way constitutes an automatic sanction, but must rather be regarded as a vicarious-liability action based on a presumption which can always be contested by evidence to the contrary."

4.6 "In the present instance, the trial judges of the case considered that Yves Morael 'had been instrumental in prolonging the life of the company while at the same time worsening its indebtedness' and found that the various measures taken by this manager 'with the aim of saving at all costs a loss-making enterprise proved inadequate ..., that it follows that Yves Morael cannot be deemed diligent within the meaning of article 99 of the Act of 13 July 1967'. It thus emerges that in the course of the proceedings the elements of proof furnished by Mr. Morael were examined so as to ensure a fair hearing, which enabled the judges to evaluate the justification for the action for coverage of liabilities brought by the official receiver. In addition, the Government sees nothing to support the view that the case of the author was not properly considered, or that the trial judges or the appeal judges did not conduct the proceedings properly and fairly. We would note on this connection that the rights of the defence were respected, the person concerned attended the hearings, and that the procedure took place before courts having all the guarantees of independence and impartiality required by article 14 (1) of the Covenant."

4.7 With regard to the author's claim that the Court of Appeal of Douai violated the principle of adversary proceedings by convicting him on the basis of elements that became known

after submission of the court-appointed administrator's findings, the State party notes that the author does not identify the elements in the file that were allegedly not the subject of adversary proceedings. Furthermore, the Court of Cassation, in its decree of 2 May 1985, explicitly dismissed this argument when it stated that "the Court of Appeal, in determining that, at the time it handed down its decision, the liabilities of SCMN exceeded its assets, relied upon the elements contained in the findings submitted by the court-appointed administrator, in which the figures are identical, to within a few francs, with whose of the statement of outstanding claims as ascertained on 15 February 1983, which was not the subject of any objection ... the Court of Appeal thus ... did not ignore the principle of adversary proceedings ...".

4.8 With respect to the alleged violation of article 14 (2), the State party observes that "the presumption of fault enunciated in article 99 of the Act of 3 July 1967 is in no way contrary to article 14, paragraph 2, of the Covenant". In an action for coverage of liabilities, "the verdict, regardless of the amount involved, remains commensurate with the loss suffered by the creditors and never has the character of a financial penalty". Under no circumstances does an action or coverage of liabilities "have a penal character, and acts constituting serious errors of management do not as such constitute criminal offences. What is more, the Public Prosecutor is not empowered to act in such a matter. Unless the court takes up the question ex officio - which was not done in this case - only the receiver may bring a petition for coverage of liabilities. But, the presumption of innocence laid down in article 14, paragraph 2, applies exclusively to criminal offences".

4.9 With respect to the alleged violation of article 14 (1) in conjunction with articles 26 and 17 of the Covenant, the State party observes that the author has failed to substantiate his allegations.

5.1 In a letter dated 13 February 1987 containing - in accordance with rule 91 of the provisional rules of procedure - the author's comments on the observations of the State party, the author notes that the State party "does not contest the admissibility of the communication" having regard to the exhaustion of domestic remedies.

5.2 With regard to the substantiation of his grievances, the author takes issue with most of the State party's arguments concerning the merits. Above all, he draws the Committee's attention to the fact that "article 99 of the Act of 13 July 1967 was the subject of a parliamentary debate in 1984 which led to the adoption of the amended bankruptcy law of 25 January 1985". This new Act, which was not applied to him, restores ordinary law in respect of the burden of proof, eliminating the presumption of fault on the part of company managers. That has two consequences in his case: first, the Court of Cassation, in its ruling of 2 May 1985, did not apply the more lenient system emerging from the new law of 25 January 1985. He was thus sentenced to bear part of the company's liabilities on the basis of a statute abandoned by the legislature less than four months earlier; secondly, the debates both in the National Assembly and the Senate indicate that article 99 of Act No. 67-563 was deemed to violate the principles of "fair hearing" and "presumption of innocence", and that eminent French professors of law and legal experts called upon to testify at proceedings under that article considered it to be distinctly penal in character.

5.3 The author quotes extensively from the debates in the French National Assembly and requests the Committee to take into account the criticisms voiced on that occasion before determining the scope of the concepts of "fair hearing" and "presumption of innocence" guaranteed by the Covenant.

The following are excerpts from the debates in the National Assembly:

Mr. Robert Badinter, Minister of Justice at the time of the parliamentary examination of article 99 and currently President of the Constitutional Council, stated:

"Existing law is still burdened by the highly repressive influence of old bankruptcy law. The present Act still regards [management] with suspicion. It threatens company managers with numerous criminal penalties ... It exposes them to liability for covering a company's indebtedness by subjecting them to a presumption of fault contrary to the fundamental principle of presumption innocence ..." (National Assembly, meeting of 5 April 1984, Compte rendu, p. 1180)

The author then quotes article 180 of the new bankruptcy law of 25 January 1985:

"When judicial reorganization or liquidation of a body corporate reveals that its assets are deficient, the court may - where a fault of management has contributed to such deficiency in assets - decide that the debts of the body corporate shall be borne, in whole or in part, jointly or severally, by all or some of the managers, whether de jure or de facto and whether or not they are remunerated ..."

The author adds that the law was voted without any deputy objecting to the adoption of that text.

5.4 With respect to the penal aspect of article 99 of the former bankruptcy law, the author further observes:

"The action for coverage of liabilities is a complex action which is not only intended to repair the loss suffered by creditors. It has a penal aspect because of the seriousness of the financial consequences (in this instance, 3 million francs for having been head of the company for a few months), and its accessory disqualifications."

The author then quotes from a law report by Professor Bouloc of the University of Paris:

"... Since a conviction ordering coverage of liabilities exposes the manager to personal bankruptcy, to prohibition of performance of managerial functions, to a procedure of judicial supervision or liquidation of personal property, and even to criminal proceedings (article 132 of the Act of 1967), it cannot be said that coverage of liabilities is purely and simply a civil institution without any connection with the criminal law ..."

5.5 The author also cites the debates of the 20th Congress of the National Association of Judicial Auditors (Compagnie nationale des experts judiciaires en comptabilite) in 1981,

which dealt with the practical application of article 99 of the then applicable bankruptcy law and which arrived at the following conclusion, inter alia:

"... article 99 can be seen to institute a penalty having no connection ... with the desire to alleviate the loss suffered by the creditors: you mismanaged the company placed under your direction, since you have filed for bankruptcy. You will be punished, and the punishment will serve as an example".

He thus concludes that the proceedings against him had a dual character, of which the criminal law aspects should be taken into consideration in relation to the terms and principles of the Covenant, which have a scope of their own independent of national laws and other definitions.

6.1 Before considering the claims contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its provisional rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

6.2 The Committee found that the parties agreed that all domestic remedies had been exhausted. It also ascertained that the same matter was not being examined under another procedure of international investigation or settlement. The communication therefore meets the requirements of article 5 (2) of the Optional Protocol.

6.3 With respect to the State party's conclusion that the communication should be rejected as "manifestly ill-founded", the Committee noted that article 3 of the Optional Protocol provides that a communication shall be considered inadmissible if it is (a) anonymous, (b) constitutes an abuse of the right of submission, or (c) is incompatible with the provisions of the Covenant. The Committee found that the author had made a reasonable effort to substantiate his complaints and that he invoked specific provisions of the Covenant. Therefore, the Committee had to examine the issues raised, when deciding on the merits of the case.

6.4 The Committee noted that both the author and the State party had already presented numerous observations on the merits of the case. However, the Committee deemed it appropriate at that juncture to limit itself, as the rules of procedure required, to ruling on the admissibility of the communication. It also noted that if the State party should wish to add to its earlier submission within six months following notification of the decision on admissibility, the author of the communication would be given the opportunity to comment thereon. If no further submissions were received from the State party under article 4 (2) of the Optional Protocol, the Committee would proceed to adopt its final views in the light of the written information already submitted by the parties.

7. Accordingly, on 10 July 1987, the Human Rights Committee decided that the communication was admissible and requested the State party, should it not intend submit further explanations or statements under article 4 (2), paragraph 2, of the Optional Protocol, to so inform it, so as to enable it to arrive at an early decision on the merits.

8. The deadline for the State party's submission of explanations or statements under article 4 (2) of the Optional Protocol expired on 6 February 1988. On 29 April 1988, the secretariat sent a reminder to the State party concerned. No further explanation or statement has been received from the State party. The Committee therefore concludes, on the basis of paragraph 2 of its decision on admissibility, that the State party does not intend to submit any further explanations or statements.

9.1 The Human Rights Committee, having examined the merits of the communication the light of all the information made available to it by the parties, as provided in article 5 (1) of the Optional Protocol, decides to base its views on the following facts, which are uncontested.

9.2 The author of the communication is a businessman and former member of the board, and later Managing Director, of the joint-stock company "Societe anonyme d cartonneries mecaniques du Nord". In 1973, the company began to experience serious financial difficulties and a judicial administrator was appointed. After a sale of some company assets to satisfy creditors in 1978, the company resumed operations under a different management. Since it continued to lose money, the general meeting of shareholders appointed the author as Managing Director on 1 July 1979. He served in that capacity until 7 December 1979, when another judicial administrator was appointed. During those five months he ordered several economy measures designed to save the company, such as closing the Paris office and reducing the salary of the Managing Director by 33 per cent; he also attempted to reduce personnel, but this was unsuccessful owing to the partial refusal of the Inspectorate of Employment and to strikes. During civil proceedings held on the petition of the court-appointed administrator for an order for coverage of liabilities, the Tribunal of Commerce of Dunkirk heard the Public Prosecutor (who made reference to criminal proceedings then pending against the author, subsequently acquitted of all charges by decision of the Tribunal correctionnel of Dunkirk on 4 May 1982) and, on 7 July 1981, finding that the author had not prove "that he had been diligent in the sense of article 99 of the Bankruptcy Act, ordered him to bear part of the company's indebtedness, as established by operations of the procedure, in the proportion of 5 per cent, together with other members of management, who were jointly ordered to pay 35 per cent of the indebtedness. The author appealed, petitioning the Court of Appeal to find that he had exercised all due diligence during his five months as Managing Director. In its order of 13 July 1983, the Court of Appeal of Douai, while acknowledging that the author had taken a number of measures, held that those measures, designed to save a loss-making enterprise at any cost, had turned out to be inadequate and that the author had helped, as Managing Director, to prolong the life of the company while worsening its finances. Consequently, the Court, considering that he had not demonstrated that he had exercised due diligence, confirmed the lower court's judgement that the company's indebtedness would partly be borne by its managers, while amending it as concerns its fixing of the amount in percentages. Deciding to take as the appropriate point for evaluating the shortfall in the company's assets the date of 15 February 1983, when it had been definitively verified, without challenge, at about FF 30 million, the Court set the sum to be charged the author at FF 3 million, independently of the other managers. The author then appealed to the Court of Cassation, arguing that the Court of Appeal had erred in finding that he had not proven due diligence and that it had based the determination of the

shortfall on elements which had not been part of the proceedings. On 2 May 1985, the Court of Cassation rejected the author's appeal, finding that the Court of Appeal had established the facts correctly and had based its decision on the verification of the statement of liabilities, about which there had been no challenge, by the parties, and that consequently it had not disregarded the principle of adversary proceedings. Subsequently, article 180 of the new Bankruptcy Act, dated 25 January 1985 (and effective as from 1 January 1986), abolished the presumption of fault, restoring the principle of proof of fault to determine the responsibilities of company managers in case of losses.

9.3 The first question before the Committee is whether the author is victim of a violation of article 14 (1) of the Covenant because, as he alleges, his case did not receive a fair hearing within the meaning of that paragraph. The Committee notes in this connection that the paragraph in question applies not only to criminal matters but also to litigation concerning rights and obligations of a civil nature. Although article 14 does not explain what is meant by a "fair hearing" in a suit at law (unlike paragraph 3 of the same article dealing with the determination of criminal charges), the concept of a fair hearing in the context of article 14 (1) of the Covenant should be interpreted as requiring a number of conditions, such as equality of arms, respect for the principle of adversary proceedings, preclusion of ex officio reformatio in pejus,* and expeditious procedure. The facts of the case should accordingly be tested against those criteria.

9.4 At issue is the application of the third paragraph of the article of the Bankruptcy Law of 13 July 1967 that established a presumption of fault on the part of managers of companies placed under judicial supervision, by requiring them to prove that they had devoted all due energy and diligence to the management of the company's affairs, failing which they could be held liable for the company's losses. The author claims in this regard that the Court of Cassation had given too severe an interpretation of due diligence, one that amounted to denying him any possibility of demonstrating that he had exercised it. It is not for the Committee, however, to pass judgement on the validity of the evidence of diligence produced by the author or to question the court's discretionary power to decide whether such evidence was sufficient to absolve him of any liability. As regards respect for the principle of adversary proceedings, the Committee notes that to its knowledge there is nothing in the facts concerning the proceedings to show that the author did not have the possibility of presenting evidence at his disposal or that the court based its decision on evidence admitted without being open to challenge by the parties. As to the author's complaint that the principle of adversary proceedings had been ignored in that the Court of Appeal had increased the amount to be paid by the author, although the change had not been requested by the court-appointed administrator and had not been submitted to the parties for argument, the Committee notes that the Court of Appeal fixed the amounts to be paid by the author on the basis of the liabilities resulting from the operations of the procedure, as the court of first instance had decided; that such verification of the statement of liabilities had not been contested by the parties; and that the definitive amount, while equal to approximately 10 per cent of the company's indebtedness, had been charged to the author individually, whereas the court of first instance had ordered payment jointly with other managers, which might have required the author to pay 40 per cent of the company's indebtedness in case it proved impossible to recover the shares due from his co-debtors. In view of the above, it is to be

doubted that there was an increase in the amount charged to the author or that the principle of adversary proceedings and preclusion of ex officio reformatio in pejus were ignored. With respect to the author's assertion that the case was not heard within a reasonable time, the Committee is of the opinion that in the circumstances and given the complexity of a bankruptcy case, the time taken by the domestic courts to deal with it cannot be considered excessive.

9.5 As to the complaint that the action for coverage of liabilities brought against the author violated the principle of presumption of innocence laid down in article 14. (2) of the Covenant, the Committee points out that that provision is applicable only to persons charged with a criminal offence. Article 99 of the former bankruptcy law entailed a presumption of responsibility on the part of company managers in the absence of proof of their diligence. But that presumption did not relate to any charge of a criminal offence. On the contrary, it was a presumption relating to a system of liability for risk resulting from a person's activities - one that is well known in private law, even in the form of absolute objective liability ruling out all evidence to the contrary. In the situation under consideration, liability was established in favour of the creditors and the amounts charged to the managers corresponded to the damages they had suffered and were to be paid in order to cover the company's liabilities. The object of article 99 of the Bankruptcy Act was to compensate creditors but it also entailed other penalties which, however, were civil-law and not criminal-law penalties. The provision concerning the presumption of innocence in article 14 (2) cannot therefore be applied in the case under consideration. That conclusion cannot be affected by the allegation that the provision of article 99 of the Bankruptcy Act was subsequently modified by elimination of the presumption of fault, considered unjust from the point of view of the material settlement of liability, for this circumstance does not of itself imply that the earlier provision contravened the above-mentioned provisions of the Convention.

9.6 With respect to the complaints of violation of articles 26 and 17 (1) of the Covenant, the Committee considers that the author has not demonstrated that he was a victim of a violation of article 26, regarding equality before the law or that the procedure followed by the French courts improperly attacked his honour and reputation, protected by article 17.

9.7 The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts which have been put before it do not disclose any violation of paragraphs 1 and 2 of article 14 of the Covenant.

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* Ex officio correction worsening an earlier verdict.