

---

# Owen vs. France

---

## Facts

The author was under unemployment from December 1995 to December 1997, during which he kept on job-hunting while receiving unemployment benefit from February 1996 to October 1997. During the same period he acted as manager of the company Riviera Communications which was co-founded by him in 1993, spent an hour per month on it without receiving any salary.

The fact that he was manager of Riviera Communications came to light in November 1997 to the ASSEDIC (French Association for Industrial and Commercial Employment). The same organization filed two summons to the Criminal Court of Grasse, respectively in March 1998 and September 2000, accusing fraud to obtain unemployment benefits. In the two hearings in 2001 during which neither the author nor his counsel was present, the ASSEDIC requested the court to make a key correction in its summons. The author and his counsel were not aware of such amendment and unable to prepare a corresponding defense. The court ruled a one-month suspended prison sentence and a fine of 65,843 Euros. The author's appeals were all dismissed.

The author claims that the lack of clarity in the summons misled him and his counsel, caused the ill-preparation on his defense. Meanwhile the burden of proof was wrongly put on him and he was not given opportunity to make appeal. He also claims that his act does not constitute fraud under the State's domestic law, and the treatment he received from the Review Commission constitutes a discrimination basing on nationality.

The State claims that the author has not yet exhausted domestic remedies in a sense that the alleged violations by the State authorities should be firstly addressed before domestic courts. Therefore the case is inadmissible (No. 661/1995 [Tribault v. France](#); No. 1118/2002 [Deperraz v. France](#)).

The author commented on the State's claim that he was unable to exhaust domestic remedies due to both the negligence of his counsel and miscarriage of justice by the State's court. He could not assert his rights before the court of appeal or the Review Commission. Therefore there is no possibility of being remedied at domestic level and the case is admissible.

## Consideration of admissibility

**Article 5 of the Optional Protocol:** The Committee finds that, as recognized by the civil division of the Aix-en-Provence Court of Appeal as well, the non-exhaustion of domestic remedies in this case should be attributed to both the victim's counsel and the State's criminal courts. Therefore the Committee found the present case admissible under Article 5 paragraph 2(b) of the Optical Protocol.

## Key words

- Presumption of innocence
- Information on charge
- Preparation of defense
- Right to appeal
- Retroactivity of the law

## Relevant Provisions

- Article 2 § 3(a)
- Article 14 §2 § 3(a)(b) §5
- Article 15 §1
- Article 5 of OP

## Violated Provisions

- Article 14 §2 §5

Meanwhile the Committee finds that the victim's claim of violation under Article 26 is inadmissible since there is no sufficient proof of discrimination against him on grounds of nationality.

## Consideration of merits

**Article 14:** The Committee finds that the content of the summons is properly drafted and there is no violation of Article 14 paragraph 3 (a). Meanwhile the victim was not given an appropriate defense due to the negligence of his counsel. Therefore there is neither violation of Article 14 Paragraph 3 (b) on the part of the State. Despite the facts above, the State's court placed a disproportionate burden of proof on the victim, which constitutes a violation of Article 14 paragraph 2 of the Covenant. The State's court failed to notify the victim of the Court's ruling in first instance thus denied him his right of appeal, which violates Article 15 paragraph 1 of the Covenant.

**Article 15:** The Committee finds that the act of the victim constitutes a criminal offence under the State's domestic law (No. 1157/2003 [Patrick Coleman v. Australia](#)). Therefore there is no violation of Article 15 paragraph 1 in the present case.

**Article 2:** The Committee finds a violation of Article 14 paragraph 2 and 5 reading in conjunction with Article 2. Under Article 2 paragraph 3 (a) the State is obligated to provide an effective remedy and to ensure that similar violations do not occur in the future.

## Conclusions

The Committee finds violations by the State party of Articles 14 paragraph 2 and 5 reading in conjunction with Article 2. The State is under an obligation to provide the victim an effective remedy, including a review of his criminal conviction appropriate compensation.

The Committee reminds the State of her obligations under the Covenant to ensure that all individuals within her territory and subject to her jurisdiction enjoy the rights recognized in the Covenant as well as effective remedies in case of violation of these rights. The Committee wishes to receive from the State party, within 180 days, a report about the measures taken by the State. In addition, it requests the State party to publish the Committee's Views.

## Dissent/Concurrence

N/A