United Nations CCPR/C/137/D/2806/2016

International Covenant on Civil and Political Rights

Distr.: General
25 May 2023
English
Original: French

Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2806/2016*, **

Communication submitted by:	Abdelkader Mahjouba (represented by counsel, William Woll)
Alleged victim:	The author
State party:	Belgium
Date of communication:	20 February 2015 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State party on 26 April 2023 (not issued in document form)
Date of adoption of Views:	17 March 2023
Subject matter:	Right to a fair trial
Procedural issues:	None
Substantive issues:	Disproportionate and discriminatory nature of the sentence handed down; lack of translations of court decisions
Articles of the Covenant:	2 (1) and (3), 9,[1] 10, 14 and 26
Article of the Optional Protocol:	5 (2) (b)

1. The author of the communication is Abdelkader Mahjouba, a French national born on 7 March 1990. He claims that the State party has violated his rights under articles 2 (1) and (3), 10, 14 and 26 (1) of the Covenant. The Optional Protocol entered into force for the State party on 17 August 1994. The author is represented by counsel, William Woll.

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Farid Ahmadov, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Gómez Martínez, Laurence R. Helfer, Marcia V.J. Kran, Bacre Waly Ndiaye, Hernán Quezada Cabrera, José Manuel Santos Pais, Soh Changrok, Tijana Šurlan, Kobauyah Tchamdja Kpatcha, Teraya Koji and Imeru Tamerat Yigezu. Pursuant to rule 108 of the Committee's rules of procedure, Hélène Tigroudja did not participate in the examination of the communication.

[1] Article 9 was raised by the author during the examination of the case, but had not been raised in his initial submission.

Facts as submitted by the author

2.1 From March to September 2012, a series of thefts employing the same modus operandi occurred in Belgium.[2] On 16 March 2012, during an investigation, French police found one of the cars that had been stolen[3] in a garage in Villeneuve-d'Ascq. In the boot of the car in question, the police found a nail puller on which, following a forensic examination, the author's DNA was identified.

2.2 On 27 September 2012, the author, who had been handed over to the Belgian police under a European arrest warrant, was questioned by the Belgian investigating judge about the presence of his DNA on the nail puller. The author explained that the nail puller came from his brother's shop, where he had worked and which had been broken into on several occasions.

2.3 Following the issuance of a report dated 28 September 2012, which compared the author's DNA profile with the DNA trace found on the nail puller, the author was sentenced by the Ypres *Tribunal de Grande Instance* (court of major jurisdiction) to 11 years' imprisonment on 25 March 2013. The author points out that the judgment in question was written in Dutch, a language that he does not understand.

2.4 The author filed an appeal with the Ghent Court of Appeal on 14 June 2013, arguing, among other things, that the European arrest warrant was inadmissible for some of the offences with which had been charged. The author also pointed to the lack of a second expert opinion on the DNA, the lack of a copy of the report on the DNA test carried out on the nail puller in France and the fact that the French police had not transferred the sample taken from the nail puller to the Belgian authorities. He also requested that the procedure by which he was identified through a two-way mirror be found inadmissible. Lastly, the author requested that the nail puller be excluded as evidence as he had not been given access to this piece of evidence, despite the request that he had made on 28 September 2012 to the investigating judge, who had stated that the author's DNA was on the object in question. The author states that his right to a fair trial was violated by the fact that the disputed nail puller had not been deposited with the court registry.

2.5 On 27 June 2013, the Court of Appeal ordered the Belgian public prosecutor's office to make the nail puller available so that the defence could obtain a second expert opinion. On 18 September 2013, the author was informed that the nail puller, the DNA test report and the first sample taken had been deposited with the registry of the Court of Appeal. The report stated that only one of the two samples[4] found on the nail puller contained the author's DNA.

2.6 On 2 October 2013, the author submitted a request to the competent federal judge asking for a second expert opinion based on new cellular material taken from another part of the nail puller. On 21 October 2013, a letter sent to the defence by the federal judge referred to a supplementary court record stating that the defence's request for a second expert opinion had not been taken into consideration "as it is not possible to draw any conclusion other than that the pure DNA profile on the head of the nail puller is that of Mr. Mahjouba".[5] The author has therefore noted the refusal. The federal judge also referred to another expert report drawn up by Professor Deforce after a request that he had made on 24 September 2013. However, this report was not enclosed with the letter sent to the defence on 21 October 2013. On 22 October 2013, the registry of the Court of Appeal sent a fax to the defence to notify it of several documents that had been included in the case file, including the new expert report. In October 2013, the federal judge requested a new expert opinion on his own initiative without informing the author's defence or taking a new DNA sample from the author.

[2] These thefts of equipment, including car keys, were committed with the use or threat of use of a weapon and received widespread media coverage. See *La Voix du Nord*, "Home jacking, cambriolage et coups de feu, ce matin entre la Belgique, Bondues et Villeneuve-d'Ascq", 8 April 2012.

[3] The car had been stolen in Zulte, Belgium, on 1 March 2012.

[4] Two samples were taken from the nail puller: the first, taken from the head of the tool, contained the author's DNA, while the second, taken from the handle, did not.

[5] Supplementary court record, p. 6.

2.7 On 20 December 2013, the Ghent Court of Appeal stated that the author had been unable to obtain a genuine second expert opinion on the nail puller[6] and added that it was unlikely that sufficient human genetic material remained in the smear for a second expert opinion to be obtained. In the Court's view, the defendant's inability to obtain a second expert opinion on the sample did not mean that his right to a fair trial had been violated, as he was now able to obtain a second expert opinion on the trace found, on which the first expert had drawn up an opinion. The author had been in a position to obtain such a second expert opinion, which could have been completed prior to the hearing, since at least late September 2013.[7] The Court found that the rights of the defence and the right to a fair trial had not been violated and sentenced the author to 13 years' imprisonment in a judgement written in Dutch.

2.8 The author filed an appeal in cassation and, on 6 May 2014, the Court of Cassation dismissed the author's appeal in a ruling written in Dutch.

Complaint

3.1 The author considers that the State party has violated the principle of equality of arms established in article 14 of the Covenant. He is also deeply concerned about the disproportionate and discriminatory nature of the sentence handed down and the fact that the rulings issued against him were not translated.

3.2 In the author's view, the fact that it was impossible for him to obtain a second expert opinion on the nail puller, which is the only piece of evidence linking him to the thefts, constitutes a violation of the principle of equality of arms.

3.3 The author claims to have been unjustly sentenced to 13 years' imprisonment, even though he had no previous convictions, in Belgium or anywhere else. With regard to the offence, which the author considers to be minor as it did not result in any deaths or serious injuries, he considers his sentence to be harsh, disproportionate and discriminatory, resulting in a violation of article 14 (1) of the Covenant, read in conjunction with articles 10 (3) and 26.

3.4 The fact that the first and second instance trials were conducted in Dutch, and the judgments were written in that language, which the author does not understand, constitutes unreasonable discrimination incompatible with the right to a fair trial established in article 14 of the Covenant, read in conjunction with article 2 (3). The author argues that the right to a fair trial requires the presence of an interpreter in criminal proceedings so that defendants are able to defend themselves. This requirement applies to the whole of the proceedings. The author therefore argues that the fact that an interpreter was present only during the trial and that the judgments issued were not translated constitute a violation of article 14 of the Covenant, read in conjunction with article 2 (3).

3.5 Accordingly, the author calls upon the Committee to find a violation of the Covenant and to request the State party to provide appropriate reparation in the form of immediate release,[8] adequate compensation for the years of imprisonment served, reimbursement of the costs of translating court decisions and, in the alternative, the organization of a retrial in compliance with the obligations arising from the right to a fair trial defined in article 14 of the Covenant.

State party's observations on admissibility and the merits

4.1 On 14 March 2017, the State party submitted its observations on admissibility and the merits. It claims that it did not violate article 14 (1) and (3) of the Covenant in that it did not violate the principle of equality of arms between the defence and the prosecution in a criminal trial. It maintains that this principle implies only that each party to the proceedings should have the same procedural means and be able, under the same conditions, to have knowledge of the material and evidence submitted to the court for its consideration and to challenge them

[6] See item 7 attached to the communication.

[7] It should be noted that the author had the opportunity to obtain a second expert opinion on the nail puller between late September and 14 November 2013, but he did not do so.

[8] It should be noted that, at the time of writing, the author had already spent 11 years in prison.

freely. It does not follow that parties with different status and interests must always be in identical circumstances in order to benefit from these opportunities.[9]

4.2 The author states that he was unable to obtain a second expert opinion on the nail puller. In his view, this tool was the sole piece of evidence that might link him to the thefts, and the first and second instance judges relied on it to the exclusion of all other evidence in convicting him. The State party recalls that, according to the Committee's jurisprudence, it is for the appeal courts in States parties, not the Committee, to review the facts and evidence in a case unless it can be shown that the decisions of the national courts were clearly arbitrary. As mentioned in the judgment of 20 December 2013 of the Ghent Court of Appeal, the federal judge included in the case file the nail puller and a certified copy of the report on the DNA analysis that the French authorities had carried out on the nail puller, among other things, as requested in the interim judgment of 27 June 2013. According to official report No. 1820/2013 of 9 September 2013 of the criminal investigation police in Ypres, the aforementioned analysis report was received on 6 September 2013 and the nail puller was deposited with the registry of the criminal court in Ypres on the same day, under number OS 851/13.

4.3 The federal judge demonstrated that the author's lawyer had indeed been informed by email, on 1 September 2013, that the nail puller had been deposited with the court registry and that the DNA analysis report had been added to the case file. The Ghent Court of Appeal noted that, as the request to add these documents had been made only in the interim judgment of 27 June 2013, the time taken to transfer them, taking holidays into account, was acceptable. There is no evidence that the federal judge had had prior access to this written proof. There can be no valid presumption of unfairness with regard to the evidence to be submitted. This notice also gave the author sufficient time to examine these matters or have them examined.

4.4 The author had already argued before the Ghent Court of Appeal that his inability to obtain a second expert opinion on the sample taken from the nail puller in France (which, according to the DNA test carried out in France, matched his DNA profile) meant that this evidence should not have been used in criminal proceedings in Belgium. In this regard, he invokes article 13 of the Act of 9 December 2004 on mutual international legal assistance in criminal matters.[10] In this connection, criminal court judges must assess the lawfulness of evidence obtained abroad by examining whether foreign law recognizes the evidence used, whether it would be contrary to Belgian public policy and whether the evidence was obtained in compliance with foreign law. In order to do so, judges may use all the information submitted to them, in compliance with the procedure in force, that the parties have had the opportunity to challenge.

4.5 The author does not claim that the nail puller was obtained unlawfully. Moreover, several DNA tests were carried out on the nail puller at the request of the criminal investigation officer, with the authorization of the French public prosecutor in Lille, on 18 March 2012. These tests were carried out by a qualified expert from the forensic laboratory in Lille.

4.6 In addition, the Ghent Court of Appeal rightly noted that, while it is unlikely that there is still sufficient human genetic material following the smear to allow for a second expert opinion, the author had the opportunity to obtain a second expert opinion on the basis of the DNA profile produced by the first expert, using the first sample taken from the trace found, and to do so before the hearing on 14 November 2013.

4.7 Contrary to the author's claim, the report drawn up by the qualified expert from the Lille laboratory does not show that the DNA sample contains a mixture of profiles. Nor can this be deduced from Professor Deforce's report of 14 October 2013, which explicitly states that "a sample was taken and DNA tests were performed on the head of the nail puller by the Lille forensic laboratory. Using this approach, a pure male DNA profile was obtained."

[9] *Torregrosa Lafuente et al. v. Spain* (CCPR/C/72/D/866/1999) para. 6.2; and *Hart v. Australia* (CCPR/C/70/D/947/2000), para. 4.3.

[10] This article prohibits the use of evidence irregularly gathered abroad in proceedings conducted in Belgium.

4.8 The Ghent Court of Appeal rightly concluded that there no grounds for rejecting the DNA analysis report as evidence obtained from France, and that this evidence clearly showed that the author's DNA profile had been found on the nail puller.

4.9 After a further in-depth review of the documents in the case file and the discussions at the hearings, the Ghent Court of Appeal concluded that the charges against the author (A to M and O) had been proved, with the latter charge relating only to the period prior to 8 March 2012, aside from the allegations relating to Kortrijk and Langemark-Poelkapelle.

4.10 Contrary to what the author claims, it is not the case that the sole evidence for the finding against him is the analysis determining that his DNA was on the nail puller found in the stolen car. The Ghent Court of Appeal noted several pieces of evidence that supported a finding against the author: (a) a search of the author's home uncovered clothing stolen from a clothes shop in Bergues during a break-in committed at 5.20 a.m. on 25 February 2012; (b) when the author was questioned about this break in, he first denied and then admitted that he had been one of the perpetrators as his DNA had been found at the scene; (c) the author shared the spoils of the break-in; (d) at least one of the four shoe prints found in Bergues was also found again at the scene of the break-in committed in Wevelgem on 1 March 2012, and the author admitted that he wore this brand of shoes, among others; (e) the car stolen during the Zulte break-in on 1 March 2012, which was discovered in the garage in Villeneuve-d'Ascq on 16 March 2012, was found to contain other clothes from the Bergues break-in; (f) the written statement by a neighbour of the company where the author allegedly worked for his brother, and from which the tool was allegedly stolen in February 2012, is unreliable because no official complaint was filed, aside from a complaint lodged in May 2012, i.e. after the alleged acts, and the Ghent Court of Appeal cannot be persuaded that it was purely a matter of chance that a vehicle in which the author claims never to have entered contained a hammer with his DNA and clothes from the Bergues break-in, which he admits to having participated in; (g) a similar nail puller was used in the acts committed on 7 and 8 March 2012, as shown in a video of the acts in Roeselare; and (h) the car stolen on 1 March 2012 was also used in the acts committed on 7 and 8 March 2012.

4.11 The Court of Cassation also noted that article 90 (4) (2) undecies of the Code of Criminal Procedure provided that, if the report arising from the initial investigation stated that the quantity of human cellular traces recovered was insufficient to establish a new DNA profile, a second expert opinion could be obtained on the basis of new human cells taken from the person concerned and the DNA profile produced by the first expert using the detected trace.

4.12 The report in question must indicate that the quantity of human cells was insufficient to establish a new DNA profile so that the parties may be informed as to how the second expert opinion may be provided. This report is not binding on the judge. The relevant article of the Code of Criminal Procedure determines the method by which a second expert opinion should be obtained in the event that the genetic material proves insufficient to establish a new DNA profile. The fact that the author was entitled to obtain a second expert opinion in these circumstances proves that his rights have not been infringed.

4.13 As the ruling of the Court of Cassation makes clear, in considering that the appellant did not seek to obtain a second expert opinion on the basis of the DNA profile established by the first expert using the detected trace, as he could have done, given that there was insufficient human genetic material remaining in the sample to allow for a second expert opinion, it may be concluded that the ruling of the Ghent Court of Appeal addresses the arguments raised by the author in his defence and that the decision is properly reasoned and legally founded.

4.14 The State party cannot follow the author's argument that, in order for the second possible procedure for obtaining a second expert opinion provided for by the Code of Criminal Procedure to be considered, the ruling should have found that the report based on the initial investigation clearly indicated that the quantity of human genetic material recovered was insufficient to establish a new DNA profile. If, after the nail puller had been deposited with the registry, at the author's own request, he had logically made use of the opportunity to obtain a second expert opinion, the situation would have been as follows: either, contrary to what the appeal judge assumed, there was sufficient human genetic

material remaining in the sample to allow for a second expert opinion or, failing that, the second expert opinion could have been obtained on the basis of the DNA profile established by the first expert using the detected trace. The author's inability to obtain a second expert opinion on the basis of a new DNA profile does not mean that his right to a fair trial and his right to a defence had been disregarded, since he could still have made use of the second possible procedure for obtaining a second expert opinion provided for by the Code of Criminal Procedure. It may therefore be concluded that the principle of equality of arms necessary for the right to a fair trial was fully respected in this case.

4.15 With regard to the proportionate and non-discriminatory nature of the sentence, the author was sentenced to 13 years' imprisonment. Invoking articles 2 (1), 10 (3), 14 and 26 of the Covenant, the author argues that this sentence is disproportionate and discriminatory because he had no previous convictions, the acts of which he was accused in this case were essentially car thefts, these acts did not result in any deaths or serious injuries, and such a long prison sentence was not aimed at the author's reformation or social rehabilitation.

4.16 The first judge had already noted that, following the author's arrest for the four violent attacks committed by gangs in early March 2012, which had involved clashes between criminals armed with nail pullers and iron bars and the victims, some of whom had received blows, the author had not cooperated with the prosecution or shown any signs of guilt or regret.

4.17 The Ghent Court of Appeal noted that the author had been acquitted of certain charges and was not being prosecuted either for the acts committed in Kortrijk or for those committed after 8 March 2012 in Kortrijk and Langemark-Poelkapelle. The court, seeking to charge the author only with those acts for which there was solid evidence, had acquitted him on a number of counts. The identification of the author through a two-way mirror by a victim was not admitted as evidence as the victim had already been shown a file of photos depicting, among other things, the author's face. It could not be ruled out that the victim had recognized the author during the identification procedure because he or she had seen the file of photos.

4.18 The author belonged to a group whose aim was to commit offences against people and property. It was clearly an organized group whose main goal was to commit thefts by breaking and entering and using violence or threats, mainly at night, employing vehicles to transport large quantities of loot. The locations from which the goods were to be stolen were chosen in advance, and the criminals knew very well that a locked garage contained a luxury car. Given that the author had been found guilty of the acts committed on 1, 6, 7 and 8 March 2012, he was clearly a willing member of this group.

4.19 The established facts are extremely serious. The author was part of a gang that travelled from France to Belgium to commit four burglaries, with and without the use of violence, in one night. The perpetrators acted very coldly and were cruel and aggressive towards several victims who were only trying to protect their property. In addition to stealing valuable goods, their intention was to spread terror wherever they went. It was necessary to deploy a large number of police officers over a long period of time to draw up the necessary reports, provide support to the victims, carry out searches and prosecute the perpetrators. The acts caused severe disruption to law and order. The author's gang attacked the computer shop of two of the plaintiffs − C.W. and M.D.V. − who were assaulted. During the attack, which damaged the shop and resulted in a considerable amount of loot being taken, C.W. was hit with a hammer and M.D.V. was pushed to the ground, experiences which were very trying and traumatic for them. N.W., the couple's son, had to cope with the immediate aftermath of the break-in and his parents' physical and psychological pain.

4.20 It is also necessary to consider the trauma and fear suffered by E.D. when the perpetrators entered her bedroom while her daughter, who was less than 1 year of age, was present.

4.21 In view of the danger posed by the author, as evidenced by the established facts and his lack of remorse, the Ghent Court of Appeal considered that the sentence of 11 years' imprisonment handed down by the first judge was too lenient, and ruled that the maximum sentence provided for in the Criminal Code, i.e., 15 years' imprisonment, was justified in order to ensure sufficient and prolonged protection for society and public safety and to prevent the author from reoffending. However, given that there was no conclusive evidence indicating the exact role played by the author in the criminal conspiracy, and given that he had no previous criminal record, the sentence was only increased to 13 years' imprisonment.

4.22 The State party therefore calls on the Committee to find that the sentence is proportionate and non-discriminatory, since anyone who committed the acts with which the author was charged would be liable to the maximum penalty.

4.23 With regard to the assistance of an interpreter at the hearings, the author acknowledges that he was assisted by an interpreter working from Dutch into French. However, he states that four of the court decisions in his case were not translated and that he was obliged to have them translated himself, at his own expense, for the purposes of the present communication.

4.24 The translation of court judgments would constitute discrimination against Belgian citizens, who are expected to know French and Dutch. Article 14 (3) (f) of the Covenant requires the presence of an interpreter, if necessary, in criminal proceedings. This measure is taken so that defendants may defend themselves properly. Moreover, article 2 (3) of the Covenant prohibits any discrimination in relation to any of the rights protected by the Covenant, including in relation to language.

4.25 In the author's view, there was no reason why the obligation to provide translations should apply only to hearings, as indicated in article 14 (3) of the Covenant. While it is true that the author had to have the four court judgments in his case translated himself, at his own expense, it is not true that he and his family were unaware of the exact reasons for his convictions. The author could not have been unaware of them since, as he admits, he had a Dutch-to-French interpreter at each hearing. Thanks to this interpreter's assistance, he was able to argue and defend his case, in compliance with article 14 (3) of the Covenant. The fact that a ruling convicting him had not been translated did not prevent him from filing an appeal, in full knowledge of the facts, since a translator and the author's lawyer could explain the reasons for appealing against the first ruling.

4.26 It is not the case that the author was subjected to discrimination in relation to Belgian citizens. Not all Belgian citizens have sufficient knowledge of both languages to avoid having to use an interpreter at hearings and a translator for judgments, as the author did.

4.27 At present, article 22 of the Act of 15 June 1935 on the use of languages in judicial proceedings allows accused persons who understand only one of the national languages to request a translation of police reports, statements by witnesses or complainants and expert reports drawn up in the other national language. This provision provides for the translation of only the listed documents, to the exclusion of all other documents in the case file.

4.28 In addition to the provision made under article 22, article 38 of the Act requires the translation of any procedural document, judgment or ruling in criminal matters (with the exception of appeals in cassation) drafted in one of the national languages when it is to be served in another language region of Belgium. Article 38 requires that the document served be accompanied by a translation into the language of the linguistic region of Belgium into which it is to be served. This translation requirement is therefore independent of the language skills of the recipient − who, in the present case, does not reside in a linguistic region of Belgium but in France − except that it may be waived if the recipient has chosen or accepted the language of the proceedings.

4.29 From all the foregoing considerations, it is clear that the author's claims are totally unfounded and that the present communication contains no specific argument whatsoever that might substantiate his assertions and cast doubt on the detailed findings of the domestic authorities.

Author's comments on the State party's observations

5.1 In his comments of 21 April 2017, the author elaborates on the unfairness of the proceedings, which led to his being sentenced to 13 years' imprisonment. He supplements his initial submission by invoking a violation of article 9 of the Covenant.

5.2 In response to the State party's observations, the author wishes to clarify the facts giving rise to his communication and to explain in greater detail how these facts violated his right to a fair trial under article 14 of the Covenant.

5.3 The case began in 2012 with a series of thefts in Belgium, including the theft of a car. The stolen car was subsequently found in France, with a nail puller in the boot. A trace of the author's DNA was quickly identified on the nail puller by a French forensic laboratory. Once extradited to Belgium, the author was first tried by the Ypres *Tribunal de Grande Instance*, which ruled that the DNA trace was sufficient to link him to the thefts committed in Belgium and to incriminate him. At the time, the author was unaware of the report drawn up by the French laboratory that had analysed the nail puller. The author changed his lawyer and filed an appeal. He then requested a copy of the forensic report drawn up by the laboratory and a second expert opinion on the nail puller.

5.4 The report, the sample incriminating the author and the nail puller arrived at the Ghent Court of Appeal in Belgium on 18 September 2013. On reading the report, the author's lawyer learned that the French laboratory had taken two samples from the head of the tool. However, the author's DNA did not appear in the other sample, which contained traces of other DNA (for which no follow-up action was taken). This result could potentially have cast doubt, before the lower courts, on the claim that the author had been involved in the thefts but unfortunately it was not included in the proceedings. The author claims that the prosecutor's office deliberately concealed this from the first instance judges, on the pretext that the report had remained in France.

5.5 On 2 October 2013, because he doubted that the cell sample was in fact his client's, the author's lawyer asked the federal judge for formal authorization to obtain a second expert opinion on the nail puller using a new cell sample from his client. This request was rejected by the judge on the grounds that "it is not possible to draw any conclusion other than that the pure DNA profile on the head of the nail puller is that of Mr. Mahjouba". Curiously, a few days later, the federal judge, without informing the author or his lawyer, ordered another expert opinion without taking a new cell sample from the author. The report drawn up by Professor Deforce, who carried out the analysis, states that the author's DNA was not present on the nail puller. In fact, he found the DNA of 10 or so unknown individuals on the tool. Lastly, without taking into account the second expert report ordered by the federal judge without the defence's knowledge, or the lack of a second expert report obtained by the defence, the Ghent Court of Appeal upheld the author's conviction and increased his initial sentence to 13 years' imprisonment.

5.6 Contrary to the State party's fears, the author is not asking the Committee to take the place of the Belgian judges and rule on his innocence. He is merely calling on the Committee to find that he did not receive a fair trial, insofar as he did not have the same arms at his disposal as the prosecutor's office, and the judges of the Ghent Court of Appeal showed a lack of impartiality towards him. He has therefore been subjected to a denial of justice.

5.7 The author adds that article 14 of the Covenant has been the subject of a general comment in which the Committee recalls that the requirement of impartiality has two aspects. First, judges must not allow their judgement to be influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial. For instance, a trial substantially affected by the participation of a judge who, under domestic statutes, should have been disqualified cannot normally be considered to be impartial.[11]

5.8 The author was convicted by the Ypres *Tribunal de Grande Instance* and the Ghent Court of Appeal, both of which, despite the State party's protests to the contrary, relied on only one extremely slender piece of evidence to link him to the offences: a report from a

[11] Human Rights Committee, general comment No. 32 (2007), para. 21.

foreign laboratory referring to a trace of DNA detected in only one of the two samples taken, DNA which was not found when a second expert report was produced, on the orders of a federal judge, without the defence being informed.

5.9 Furthermore, the Ghent Court of Appeal failed to take into account the second expert report, drawn up by Professor Deforce at the request of the federal judge but without the author's knowledge, which revealed that the DNA traces of at least 10 different people were on the nail puller. In these circumstances, unless all these people are to be considered guilty, the author should never have been sentenced to 13 years' imprisonment.

5.10 The bias shown by the Belgian courts can probably be explained by the harshness of the comments made in the media about the author, who was condemned by the press before any trial took place. The judgment of the members of the Ghent Court of Appeal will have been affected as a result. The author therefore concludes that the judges of the Ypres *Tribunal de Grande Instance* and the Ghent Court of Appeal were not impartial.

5.11 With regard to the denial of justice, the author considers that he was unable to obtain a second expert opinion on the sample taken from the nail puller that was used to incriminate him, or on the nail puller itself. The Belgian federal judge ordered a new expert report on the nail puller − which turned out to be negative − without informing the author, and the Ghent Court of Appeal disregarded the second expert opinion, which exonerated him, relying instead on the report drawn up by the French laboratory, despite there being no proof that it had found a sample of the author's DNA. The sentence handed down is very harsh and highly unusual for this type of offence, since it was a first conviction and no deaths were reported.

5.12 Since being transferred to France, the author has continued to proclaim his innocence. He would like his sentence to be overturned or a new trial to be held that will take into account the lack of a second expert opinion and establish the truth.

5.13 Lastly, the author considers that the State party has violated article 9 of the Covenant. In the present case, the author was quite unexpectedly sentenced to 13 years' imprisonment, without being given the opportunity to obtain a second expert opinion on the only evidence against him, by a manifestly biased court of appeal that did not meet the criteria of an independent and impartial tribunal within the meaning of article 14 of the Covenant. The author therefore concludes that there has also been a violation of article 9 of the Covenant.

5.14 The author is concerned to note that the State party puts forward no concrete arguments in its observations and claims that the sentence handed down is not excessive without, for example, providing any statistics to support its claim.

5.15 The author requests that the State party grant him just reparation, which should consist of his immediate release, adequate compensation for the years of imprisonment already served, and reimbursement of the costs incurred in bringing his case before the Committee, including the cost of obtaining translations of the court judgments convicting him. Alternatively, the State party should organize a new trial that respects the principles of the right to a fair trial set out in article 14 of the Covenant.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes that the State party does not challenge the admissibility of the communication. It also notes that the author has also claimed a violation of his rights under article 2 (1) and (3) of the Covenant. Recalling its jurisprudence according to which the provisions of article 2 lay down general obligations for States parties and cannot, by themselves, give rise to a separate claim under the Optional Protocol, as they can be invoked

only in conjunction with other substantive articles of the Covenant,[12] the Committee considers the author's claims under article 2 (1) and (3) of the Covenant to be inadmissible under article 3 of the Optional Protocol.

6.4 The Committee notes the author's allegations that the State party violated his rights under article 14 of the Covenant, in that the State party violated the principle of equality of arms, since it was impossible for the author to obtain a second expert opinion on the nail puller, which, according to him, is the only evidence linking him to the thefts. The Committee also notes the State party's observations that the principle of equality of arms implies only that each party to the proceedings should have the same procedural means and be able, under the same conditions, to have knowledge of the material and evidence submitted to the court for its consideration and to challenge them freely. It does not mean that parties with different status and interests must always be in identical circumstances in order to benefit from these opportunities.[13] The Committee also notes the State party's assertion that the author's conviction was based not only on the DNA found on the nail puller but also on other evidence. It is also clear from the information made available to the Committee that the author had approximately two months (from late September to 14 November 2013) in which to obtain a second expert opinion on the nail puller, but he did not do so.

6.5 The Committee recalls that article 14 of the Covenant is generally aimed at ensuring the proper administration of justice,[14] and considers that it is for the courts of the States parties, and not the Committee, to review the facts and evidence in a given case and that, in view of the judgments of the Belgian courts, it is not possible to demonstrate that the national courts were arbitrary.

6.6 The Committee recalls that article 14 of the Covenant concerns procedural equality. It takes the view that the author's allegations relate essentially to the evaluation of the facts and the evidence carried out by the Belgian courts and to the application of domestic legislation. The Committee recalls that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, unless it can be established that the proceedings before the domestic courts were arbitrary or amounted to a denial of justice, or that the courts otherwise violated their obligation of independence and impartiality. In the light of the information contained in the case file, the Committee is not in a position to conclude that there has been a violation of the principle of equality of arms by the domestic courts, or that the judges in the case, who sat in three different courts, violated their obligation of independence and impartiality at first instance or in the context of the appeals subsequently submitted. In the present case, the Committee is not in a position to conclude, on the basis of the evidence available to it, that, in ruling on the author's case, the domestic courts acted arbitrarily or that their decision amounted to a denial of justice. The claims are therefore inadmissible under article 2 of the Optional Protocol.

6.7 The Committee also notes the author's claim under article 26 of the Covenant, namely, that the State party sentenced him to 13 years' imprisonment at second instance, instead of 11 years at first instance, and that the author considers this sentence to be disproportionate and discriminatory as he had no previous convictions, the acts of which he was accused in the case were essentially car thefts, these acts did not result in any deaths or serious injuries, and such a long prison sentence was not aimed at the author's reformation or social rehabilitation. The Committee notes, however, the State party's argument that the facts established are extremely serious and that the author was part of a gang which travelled from France to Belgium to commit four burglaries, with or without using violence, in one night, and considers this claim to be inadmissible. As mentioned above, the author's claim under article 26 of the Covenant relates to the same issues as were raised under article 14 (1), since he alleges that the Belgian courts' findings were biased and arbitrary, leading to a disproportionate sentence. As stated in the previous paragraph, the Committee considers that,

[12] See, for example, *Peirano Basso v. Uruguay* (CCPR/C/100/D/1887/2009), para. 9.4; *A.P. v. Ukraine* (CCPR/C/105/D/1834/2008), para. 8.5; *Castañeda v. Mexico* (CCPR/C/108/D/2202/2012), para. 6.8; *H.E.A.K. v. Denmark* (CCPR/C/114/D/2343/2014), para. 7.4; and *Ch.H.O. v. Canada* (CCPR/C/118/D/2195/2012), para. 9.4.

[13] *Torregrosa Lafuente et al. v. Spain*, para. 6.2; and *Hart v. Australia*, para. 4.3.

[14] Human Rights Committee, general comment No. 32 (2007), para. 2.

on the basis of the evidence at its disposal, it is unable to establish that the domestic courts acted in a discriminatory manner in ruling on the author's case. It also points out that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation. The Committee therefore declares the author's claims under article 26 of the Covenant to be inadmissible pursuant to article 2 of the Optional Protocol.

6.8 The Committee notes that the author raises claims under articles 9 and 10 of the Covenant. However, the author does not explain in what way his rights have been violated. The Committee therefore declares that his claims under articles 9 and 10 of the Covenant are inadmissible as they are insufficiently substantiated and therefore unfounded.

6.9 However, the Committee considers that the author's allegations concerning the failure to translate court judgments are sufficiently substantiated, and declares the present communication admissible based on the claims raised under article 14 (3) of the Covenant, read alone and in conjunction with article 26, and proceeds with their consideration on the merits.

Consideration of the merits

7.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

7.2 With regard to the author's claim under article 14 (3) of the Covenant concerning the failure to translate court judgments from Dutch into French, the Committee notes that the author was assisted by a Dutch-speaking interpreter and lawyer at all the hearings. The author therefore had the opportunity to put forward arguments and defend himself during his trial, in accordance with article 14 (3) (f) of the Covenant. In addition, the author argues that the failure to translate court judgments into his language is discriminatory. However, he does not explain how he was a victim of discrimination within the meaning of article 26 of the Covenant. The author does not provide any evidence that any non-Dutch speakers in the same situation as him, whether they are French or foreign nationals, have had court judgments against them translated into their language by the Belgian authorities. Furthermore, the State party's observations clearly refer to the national law (the Act of 15 June 1935 on the use of languages in judicial proceedings, art. 38) under which any procedural document, judgment or ruling in criminal matters, with the exception of appeals in cassation, drafted in one of the national languages, must be translated if it is to be served in another language region of Belgium. This article requires that the document served be accompanied by a translation into the language of the linguistic region of Belgium into which it is to be served. This translation requirement is therefore independent of the language skills of the recipient, who, in the present case, resides not in a linguistic region of Belgium but in France. The Committee considers that neither the author nor his family could have been unaware of the exact reasons for his convictions, since, as he admits, he was provided with a translator and a lawyer at each hearing. The fact that a ruling convicting the author had not been translated did not prevent him from filing an appeal, in full knowledge of the facts, since a translator and the author's lawyer could explain to him the pros and cons of filing an appeal against the first judgment.

8. In the light of the above, the Committee considers that the information before it does not allow it to conclude that the State party violated the author's rights under article 14 (3) of the Covenant, read alone and in conjunction with article 26.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it would not be a violation by the State party of article 14 of the Covenant.