



International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2148/2012*, **

<i>Communication submitted by:</i>	M.A.K. (represented by counsel, Mr. Antoine le Court)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Belgium
<i>Date of communication:</i>	22 November 2011 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 27 April 2012 (not issued in document form)
<i>Date of decision:</i>	28 March 2017
<i>Subject matter:</i>	Criminal conviction for having exposed acts of corruption
<i>Substantive issues:</i>	Right to a fair trial; non-retroactivity of the law; unlawful attacks on honour and reputation
<i>Procedural issues:</i>	Lack of victim status; failure to substantiate claims; incompatibility <i>ratione materiae</i> with the provisions of the Covenant; examination of the same case by another international settlement procedure
<i>Articles of the Covenant:</i>	14, 15 and 17
<i>Articles of the Optional Protocol:</i>	1, 2, 3 and 5 (2) (a)

1. The author of the communication is M.A.K., a national of Pakistan, born on 11 October 1959. He claims to have been a victim of violations by Belgium of articles 14, 15 and 17 of the Covenant. The author is represented by counsel, Mr. Antoine le Court. The Optional Protocol entered into force for the State party on 17 May 1994.

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The following members of the Committee participated in the examination of the communication: Ms. Tania María Abdo Rocholl, Mr. Yadh Ben Achour, Ms. Ilze Brands Kehris, Ms. Sarah Cleveland, Mr. Ahmed Amin Fathalla, Mr. Olivier de Frouville, Mr. Christof Heyns, Mr. Yuji Iwasawa, Mr. Bamariam Koita, Ms. Marcia V.J. Kran, Mr. Duncan Laki Muhumuza, Ms. Photini Pazartzis, Mr. Mauro Politi, Mr. José Manuel Santos Pais, Mr. Yuval Shany and Ms. Margo Waterval.



The facts as submitted by the author

2.1 The author arrived in Belgium in 1982, obtaining a Belgian residence permit the same year. From the late 1980s, the author ran several firms that were involved, among other activities, in operating so-called “unbranded petrol pumps”. At that time, the major oil companies were gradually abandoning this market to operators of what were known as “unbranded” service stations — as opposed to service stations selling branded products — letting them take over service stations that, in the companies’ eyes, were no longer sufficiently profitable or would be closed, sooner or later, on account of the potential risks (hazardous locations, soil pollution). The new operators of these “unbranded petrol pumps” were able to cut prices as they were not investing in marketing or human resources and were not dependent on large, costly structures.

2.2 It was against this background that an anonymous complaint was made to the Minister of Finance on 16 March 1992 alleging the sale of petrol at prices lower than the official price and failure to declare purchases. The Minister forwarded the complaint to the Special Tax Inspection Service, which, in turn, reported the case to the Brussels prosecutor’s office on 4 June 1992. Two distinct sets of charges were brought against the author on this basis, relating to his tax practices and his employment practices, respectively.

2.3 Regarding the tax aspect of the case, the investigation into the author was opened on 15 June 1992 and entrusted to Judge Van Espen, who led it until its formal conclusion in 2003. On 22 November 1994, searches were conducted at the author’s home and at the offices of the firms he ran, and a warrant was issued for the author’s arrest. On 23 November 1994, the author was charged with the following offences: forgery and making use of forged documents and value added tax (VAT) records; breaches of articles 449 and 450 of the Income Tax Code and articles 45, 50 (1-4), 73 and 73 bis of the Value Added Tax Code; criminal conspiracy, fraud, breach of trust and money-laundering.

2.4 In an order of 28 November 1994, the Brussels Court of First Instance in chambers approved the author’s pretrial detention. Ruling on the author’s appeal against that decision, the indictment division of the Brussels Court of Appeal ordered his immediate and unconditional release on 14 December 1994.

2.5 The Belgian Senate, in a resolution of 18 July 1996, decided to establish a commission tasked with investigating organized crime. In the course of its work, various academic experts and practitioners appeared before the commission as witnesses. The investigating judge, Judge Van Espen, was heard by the commission in this capacity on 14 March 1997. During his testimony, he proposed a definition of organized crime, basing himself on the case of the unbranded petrol pumps and characterizing the individuals involved in that scheme as “*truands*” (crooks).

2.6 Following this testimony, the investigation continued under Judge Van Espen until October 1998 and involved the questioning of the author, the conduct of inquiries into his property and the addition to the case file of information obtained from the tax authorities. On 22 September 2000, the Brussels prosecutor’s office applied for the author’s committal before the competent trial court. On 8 October 2002, a hearing took place before the Brussels Court of First Instance in chambers to determine further procedure in the case; during this hearing, Judge Van Espen referred to the comments he had made to the Senate’s commission of inquiry.

2.7 The author and his counsel, considering those comments to be incompatible with the investigating judge’s duty of impartiality, made several applications to have the judge’s report, along with all the investigative measures he had undertaken, declared null and void. Those applications were, however, rejected by the Court of First Instance in chambers: the Court issued an order on 8 May 2003 in which the judge’s impartiality went unquestioned, and the author was committed for trial before the criminal court on the charges set out in paragraph 2.3 above.

2.8 The author appealed this decision, which was nevertheless upheld by the indictment division of the Brussels Court of Appeal in a ruling of 18 November 2003, which read as follows:

“Whereas the documents on the file show that the investigating judge examined the cases for prosecution and defence and respected all the obligations incumbent on him under the law (in particular, article 56 of the Code of Criminal Procedure); whereas there is nothing in the voluminous investigation file submitted to the Court that could call into doubt the investigating judge’s independence or impartiality, which, moreover, are presumed save proof of the contrary.

Whereas, in view of the totality of his duties, the comments made by the investigating judge on 14 March 1997 before the Senate parliamentary commission tasked with investigating organized crime in Belgium and adduced as evidence by the accused in their submissions and consolidated submissions do not of themselves raise reasonable doubt as to his ability to conduct the investigation impartially; whereas the comments adduced were in fact made outside the context of the investigation, which was virtually closed at the time; whereas the accused did not exercise in a timely manner the remedies made available to them by the law in order to secure the investigating judge’s removal; whereas, on the contrary, they continued voluntarily before him until the filing of the application for committal during the hearing to determine further procedure in the case [...]

Whereas it is clear from these observations and considerations that the investigating judge did not fail in his duty of impartiality or show any bias [...].”

2.9 The author appealed this decision before the Court of Cassation. In its ruling of 7 April 2004, the Court of Cassation stated that the appeal court judges had not “provided legal justification for their decision holding the investigative measures taken by [the investigating judge] after 14 March 1997 to be lawful”, and the case was referred back to the indictment division of the Brussels Court of Appeal.

2.10 In a ruling of 19 October 2005, the indictment division overturned the committal order of 8 May 2003 (para. 2.7) and appointed an investigating judge, Judge Lutgenz, to report to it on the lawfulness of the proceedings against the author. During a hearing on 15 February 2006, the investigating judge stated that he had not found in the file any investigative measures that called into question the impartiality of Judge Van Espen.

2.11 On this basis, the indictment division concluded as to the lawfulness of the investigation conducted and, in a new order of 19 April 2006, committed the author before the competent trial court, namely the Brussels Criminal Court. The author then filed an appeal in cassation.

2.12 The Court of Cassation, in a ruling of 20 September 2006, rejected this appeal, on the grounds that the appeal court judges had been able to provide legal justification for their decision holding that the measures taken by the investigating judge after 14 March 1997 were not marred by any irregularities.

2.13 The author argued again before the Brussels Criminal Court that the investigative measures carried out by Judge Van Espen were null and void and that the prosecution was inadmissible because the statute of limitations for the offences with which he was charged had expired. His application was rejected on 28 September 2007.

2.14 At trial, the Criminal Court acquitted the author of the charges of forgery of private business documents but found him guilty of forgery and making use of forged tax records, fraud, breach of trust, money-laundering, VAT fraud and criminal conspiracy. The Court observed that the criminal proceedings had “certainly [been] unreasonably prolonged”, contrary to article 6 of the European Convention on Human Rights, and decided in consequence to impose “a significantly lesser penalty than that which would have been imposed by the Court had the trial taken place within a reasonable time”.

2.15 The Criminal Court applied the reduction of sentence to the primary penalty handed down: the author was sentenced to imprisonment for 20 months, suspended for 5 years, fined €12,000 and prohibited from exercising professional activities for a period of 10 years,

the maximum provided for under the relevant provision.¹ In addition, financial confiscation orders were passed for sums of US\$ 1,500,000 (the proceeds of the money-laundering offences) and €28,016,799.70 (the value of the property advantages obtained from the fraud), respectively. With regard to the civil claims lodged, the author and two of his co-defendants were ordered to pay a total of €56,057,194.40 to the State party.

2.16 The author appealed his conviction before the Brussels Court of Appeal. Once again, he reiterated the allegations against Judge Van Espen, again invoking the provisions of international human rights law. On 21 October 2008, the Brussels Court of Appeal rejected his arguments; it found, “after examining all the facts and in the light of the specific circumstances of the case, [that] the accused was not deprived of his absolute right to a fair trial, notwithstanding the breach on the part of the investigating judge”.

2.17 Concerning the claim that the prosecution should be deemed statute-barred (the statute of limitations for the alleged offences of forgery and making use of forged tax records should have begun to run on 25 October 1996 at the latest, so that the statute should have been considered to have expired on 25 October 2006 at the latest), the Court based itself primarily on the principle that the statute of limitations only begins to run when the effect sought by the perpetrator ceases, or when the forged records can no longer cause harm. The Court thus found, in the current instance, that the practical effects of the forged records remained ongoing, with the result that the statute had yet to begin running in respect of the charges against the defendants.

2.18 Furthermore, the Court of Appeal validated the Criminal Court’s analysis with regard to the charges that should be upheld against the author and confirmed the primary and ancillary penalties imposed on him, while conceding that the proceedings had been unreasonably prolonged. The Court of Appeal rejected the author’s application for a simple finding of guilt to be made against him without imposition of a penalty, as provided for in article 21 ter of the preliminary section of the Code of Criminal Procedure. The author filed a final appeal in cassation against the judgment of the Brussels Court of Appeal, thereby exhausting domestic remedies. His appeal was rejected by the Court of Cassation on 3 June 2009.

2.19 With regard to the employment aspect of the case, which involved various alleged breaches of the Belgian laws and regulations on compulsory enrolment of workers in the social security system and payment of social security contributions, the author was accused of employing “false contractors” and persons registered as unemployed, failing to display the working hours for part-time work and violating the laws applying to foreign workers. The author was also prosecuted on charges of making use of a forged document to contract a sham marriage with a Belgian national for the purpose of obtaining a Belgian residence permit.

2.20 In December 2004, the prosecutor’s office attached to the labour courts applied for all the offences listed to be referred to the competent trial court, with the exception of the offences of employing persons registered as unemployed and failing to display the working hours for part-time work, requesting that the proceedings in respect of those offences be terminated for want of sufficient evidence. However, in orders handed down successively on 13 January 2006 and 14 February 2006, the Brussels Court of First Instance in chambers declared the prosecution to have lapsed in respect of each offence for which referral was requested. In so doing, the Court considered that it was not necessary to rule on the nullity of the investigation conducted by Judge Van Espen.

2.21 On 25 November 2009, the author lodged an application against Belgium with the European Court of Human Rights. The Court, sitting in single-judge formation, rejected the application without giving grounds on 4 October 2011.

¹ The judges considered that the acts with which the author was charged constituted a collective offence by virtue of unity of intent and should be punished by a single penalty, the most severe.

The complaint

3.1 The author claims that the criminal proceedings against him did not take place within a reasonable time, violating the guarantee provided in article 14 (3) (c) of the Covenant. He recalls that the proceedings lasted nearly 17 years. The author emphasizes that the courts, while taking into account the undue delay, reduced only the primary penalty of deprivation of liberty and not the “ancillary” penalties, the impact of which was considerable, according to the author.

3.2 The author cites the lack of impartiality of the investigating judge, as evidenced by his comments to the Senate commission of inquiry on 14 March 1997, which constitutes a violation of article 14 of the Covenant. In the author’s view, bearing in mind that the investigating judge is the key player in the preliminary phase of the criminal process, bias on his part irreparably undermines the lawfulness and the very fairness of the proceedings. The author asserts that he always had doubts as to the judge’s impartiality, contrary to the findings of certain courts. He denounced this lack of impartiality as soon as it became clear, that is, at the hearing on 8 October 2002 before the Brussels Court of First Instance in chambers. The domestic courts found, however, that the investigating judge’s proven bias had not in any way affected the proper conduct of the investigation.

3.3 Furthermore, the Belgian courts placed on the author the burden of proving that the investigating judge’s bias had undermined the lawfulness of the proceedings. That burden could only be satisfied, moreover, by demonstrating that the judge’s individual intentional acts were unlawful, and only those acts that had taken place after the disputed display of partiality (that is, after 14 March 1997) could be taken into consideration for the purpose of that demonstration. The author objects to this for two reasons: first, in his view, bias against a person does not necessarily arise exactly concomitantly with the public display of that bias. The fact that the investigating judge only made the disputed remarks on 14 March 1997 does not preclude the possibility that the bias underlying the remarks existed prior to that date, it being understood that it is not for the author to prove that this was the case.

3.4 The author is of the view that the reasoning of the Belgian courts, which held that the lawfulness of investigative measures could not be challenged solely on the basis that the person who took them lacked the requisite impartiality, strips the guarantee of judicial impartiality of any practical usefulness, since violations would not, in reality, give rise to any separate effect or penalty. This being so, the investigating judge’s lack of impartiality rendered the proceedings as a whole, which were brought on the basis of the investigation conducted by the latter, unfair and unlawful.

3.5 According to the author, the investigating judge, in the comments he made to the parliamentary commission of inquiry before judgment was handed down in the author’s case, did not confine himself to merely setting out the suspicions weighing against the author but rather declared him guilty. The author recalls that the investigating judge referred to him as a “crook” in his testimony (para. 2.5 above), which is included in the final report of the commission of inquiry. The author claims that the principle of the presumption of innocence, as guaranteed in article 14 (2) of the Covenant, was thereby violated in his regard. The author cites the Committee’s general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (para. 30), according to which it is a duty for all public authorities to refrain from prejudging the outcome of a trial, for example by abstaining from making public statements affirming the guilt of the accused.

3.6 The author adds that he was never charged with several of the offences alleged against him. Thus, he was never prosecuted, either before 14 March 1997 or subsequently, for a series of criminal offences of which he was accused by Judge Van Espen in his testimony and in the findings of the parliamentary commission of inquiry: excise fraud, offences related to drug trafficking, trafficking in persons and illegal immigration, and threats, intimidation and violence. The author concludes therefrom that article 14 (2) of the Convention was violated in his regard.

3.7 Furthermore, the author claims that the reasoning of the Court of Appeal, in its ruling of 21 October 2008, and the Court of Cassation, in its ruling of 3 June 2009, holding that the author’s prosecution was not statute-barred, is contrary to article 15 (1) of the Covenant insofar as it meant resetting the starting point of a limitation period that had

expired definitively. This article is intended to preclude the possibility of penalties being imposed for acts that are no longer punishable. The author maintains that, if the Committee were to find that the method used by the Brussels Court of Appeal and the Court of Cassation to calculate the limitation period does not breach article 15 of the Covenant, it should, at the very least, agree that, this period, owing to its length, is inconsistent with the requirement of procedural fairness contained in article 14.

3.8 According to the author, the unfairness created by the totally inordinate length of the limitation period for the prosecution was exacerbated by the complete uncertainty in which he found himself as to the *dies a quo* or starting point of this period. The Court of Appeal ruling of 21 October 2008 stated that the statute of limitations for the forgery offences charged (the acts took place in 1994) had not yet begun to run, “as an appeal remained pending before the tax authorities”. The Court of Appeal refrained from providing any further details to identify the specific appeal in question, and the Court of Cassation, in its ruling of 3 June 2009, saw nothing unlawful in this total lack of identification. For these reasons, the author maintains that the excessive length of the limitation period and the complete uncertainty in which he found himself as to the *dies a quo* of this period, by virtue of their cumulative effect, violated article 14 of the Covenant in his regard.

3.9 The author also maintains that the comments made by the investigating judge to the parliamentary commission of inquiry violated his right to honour and reputation, which is guaranteed in article 17 of the Covenant.²

3.10 Furthermore, he claims a violation of article 17 of the Covenant on account of the disproportionate nature of the ancillary penalty handed down of prohibition from exercising professional activities.³ He argues that this prohibition constitutes undue interference with his privacy. He emphasizes that he continued to exercise the activities in question during the 17 years for which the proceedings lasted, without being accused of committing any criminal act during this period; that the severity of the penalty of prohibition was in no way mitigated despite the finding made concurrently by the Brussels Criminal Court, and subsequently by the Brussels Court of Appeal in its ruling, that the proceedings against him had been unreasonably prolonged; and that a prohibition of such length must necessarily be considered disproportionate, *ratione materiae* and *ratione temporis*, when it is the result of criminal proceedings for which the limitation period was as excessive as that applied in the present case.

3.11 For all of these reasons, the author requests the Committee to invite the State party to strike from the final report of the parliamentary commission tasked with investigating organized crime in Belgium all the passages concerning him and to reopen the criminal proceedings against him. In addition, the author asks to be able to specify subsequently the form that adequate reparation for the violations found might take.

3.12 On 13 July 2012, the author’s counsel added that he was claiming from the State party, by way of reparation, reimbursement of the legal costs and fees incurred before the Belgian courts and before the Committee.

State party’s observations

4.1 On 3 April 2013, the State party submitted its observations on admissibility and on the merits of the communication. Firstly, it recalls the facts, notably that the author was charged, in the part of the case relating to tax, with forgery and making use of forged documents and VAT records, fraud, breach of trust, money-laundering, breaches of the

² The author refers to communication No. 1472/2006, *Sayadi and Vinck v. Belgium*, decision adopted on 22 October 2008, paras. 10.12 and 10.13.

³ Pursuant to the Act of 2 June 1998 amending Royal Decree No. 22 of 24 October 1934, the prohibition from exercising professional activities to which the author was sentenced for a period of 10 years covers “the functions of director, auditor or manager of a joint stock company, private limited liability company or cooperative company, as well as functions conferring authority to engage such companies, and the functions of official of a Belgian establishment referred to in article 198 (6) (1) of the consolidated Acts on commercial companies of 30 November 1935, and the profession of stockbroker or correspondence stockbroker”.

Value Added Tax Code and criminal conspiracy. As for the part of the case relating to employment, the investigation was closed in September 1998 pursuant to an order by the investigating judge, Judge Van Espen, and the file transmitted to the prosecutor's office for further action. However, in orders dated 13 January 2006 and 14 February 2006, the prosecution was declared to have lapsed in respect of each of the offences concerned. The Brussels Court of First Instance in chambers did not consider it necessary to rule, as the author had requested it to do, on the nullity of the investigation conducted by Judge Van Espen in the light of the latter's alleged bias. Nor did the author have the opportunity to be exonerated of the charges against him in that part of the case.

4.2 The State party also recalls that, on 8 October 2002 at the hearing to determine further procedure in the case, and in the report he was required to prepare on the investigation he was conducting, Judge Van Espen referred — unprompted — to the comments he had made almost six years earlier to the Senate parliamentary commission tasked with investigating organized crime. The author applied to have the judge's report declared null and void, along with all the investigative measures taken, on the grounds that those comments betrayed a lack of impartiality on the part of the investigating judge. His demands were rejected by the Brussels Court of First Instance in chambers in the committal order of 8 May 2003, on the basis that the penalty for the investigating judge's comments should not be the invalidation of the investigation. This decision was upheld on appeal by the indictment division of the Brussels Court of Appeal on 18 November 2003.

4.3 On 7 April 2004, the Court of Cassation overturned the indictment division's ruling, on the grounds that, even though the appeal court judges had not found any further breaches by the investigating judge of his duty of impartiality, they could not conclude that the judge's comments did not raise reasonable doubt as to his ability to conduct the investigation impartially. However, the investigating judge, Judge Lutgenz, who was subsequently asked to report to the indictment division on the lawfulness of the proceedings against the author did not identify in his report any investigative measures that could have called into question the impartiality of Judge Van Espen. The Court therefore confirmed that the bias of the investigating judge, since removed from the case, did not constitute an irremediable flaw, compromise the fairness of the process, or render the entire investigation null and void or the proceedings inadmissible. The State party recalls that the author was committed for trial before the Brussels Criminal Court, the competent trial court. He then filed an appeal in cassation, which was rejected on 20 September 2006.

4.4 Noting that the criminal proceedings had been unreasonably prolonged, the Court decided to significantly reduce the penalty, imposing a sentence of imprisonment for 20 months, suspended for 5 years, and a fine of €12,000 as the primary penalty, prohibiting the author from engaging in professional activities for a period of 10 years and ordering the confiscation of sums representing the proceeds of the money-laundering offences and the value of the property advantages obtained from the fraud. On appeal by the author, the Brussels Court of Appeal found that he had not been denied his right to a fair trial and upheld the primary and ancillary penalties.

4.5 The State party maintains, on the basis of these elements, that the author's claims have been carefully considered by various domestic courts and that it is not for the Committee to re-evaluate the facts and evidence in this case. The State party adds that, while he is requesting that the indictment be quashed in its entirety on account of the investigating judge's lack of impartiality, the author does not contest any of the specific charges against him. Furthermore, the author has alleged that the Belgian courts proceeded from the assumption that the lawfulness of investigative measures could not be challenged solely on the basis that the person who took them lacked the requisite impartiality, which is not correct. The State party recalls that, on 20 September 2006, the Court of Cassation rejected the author's appeal in these terms: "An investigating judge who has taken a position publicly as to the guilt of an accused person is no longer capable of assuming responsibility for weighing impartially the cases for prosecution and defence. However, it does not necessarily follow therefrom that all the measures taken by the judge are null and void." The State party contests the author's inference that the established breach of the judge's duty of impartiality was not taken into account and recalls that the Court of

Cassation found, when it concluded its own consideration of the case, that the author had not been deprived of his right to a fair trial.

4.6 The State party also rejects the author's other claims, including those relating to the presumption of innocence, to his right to honour and reputation, to the recommencement of the limitation period and to the disproportionate nature of the penalty of prohibition from engaging in professional activities, which the State party considers to be totally unfounded.

Author's comments on the State party's submission

5.1 On 10 June 2014, the author submitted his comments on the State party's submission. He notes first of all that the State party has not challenged the admissibility of the communication and merely describes his claims as insufficiently substantiated, even though he has made specific allegations.

5.2 The author reiterates all of his allegations, noting that the State party has not made any comment on the issues relating to the manifestly unreasonable delay in trying his case; the presumption of innocence; the statute of limitations; his right to honour and reputation; or the disproportionate nature of the 10-year prohibition from exercising professional activities that was imposed on him.

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 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol to the Covenant.

6.2 The Committee observes that, on 25 November 2009, the author lodged an application against Belgium concerning the same case with the European Court of Human Rights. It notes that this application was rejected by the Court, sitting in single-judge formation, on 4 October 2011 and is thus no longer being examined. In the absence of a reservation by the State party that would exclude the Committee's competence to consider communications that have already been examined by another procedure of international investigation or settlement, the Committee concludes that there is no obstacle to the admissibility of the communication under article 5 (2) (a) of the Optional Protocol.⁴

6.3 The Committee notes the author's argument that he has exhausted all available domestic remedies. In the absence of any objection by the State party, the Committee concludes that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

6.4 With regard to the author's claim under article 14 (3) (c) that he was not tried within a reasonable time and without undue delay, the proceedings having lasted almost 17 years (from 1992 to 2009), the Committee recalls that the reasonableness of the delay in a trial has to be assessed in the circumstances of each case, taking into account the complexity of the case, the conduct of the accused and the manner in which the matter was dealt with by the administrative and judicial authorities.⁵ In the circumstances of the case at hand, the Committee observes that the Brussels Criminal Court, in its judgment of 28 September 2007 on the author's appeal on the merits, noted that the criminal proceedings had been unreasonably prolonged and decided to impose "a significantly lesser penalty than that which would have been imposed by the Court had the trial taken place within a reasonable time" (paras. 2.14 and 2.15 above). In the light of the foregoing, the Committee considers that the author's complaint was properly dealt with by the authorities of the State party and that, consequently, his submission to the Committee is unfounded. The author cannot therefore claim to be a victim within the meaning of article 1 of the Optional Protocol, and this part of the communication must be declared inadmissible for that reason.

⁴ See, for example, communication No. 904/2000, *Van Marcke v. Belgium*, Views adopted on 7 July 2004, para. 6.2.

⁵ See general comment No. 32 (2007), para. 35.

6.5 Regarding the author's claim under article 14 (2) of the Covenant that the investigating judge's lack of impartiality undermined his right to the presumption of innocence and to a fair trial, the Committee notes that the facts were examined by the Court of First Instance on 8 May 2003; the Brussels Court of Appeal on 18 November 2003; and then, on 7 April 2004, by the Court of Cassation, which upheld the appeal and sent the case back to the Brussels Court of Appeal. On the basis of a report prepared by a new investigating judge it had appointed on 19 October 2005, the indictment division concluded on 19 April 2006 as to the lawfulness of the initial investigation. A new appeal in cassation was rejected on 20 September 2006, the Court of Cassation having ruled that the measures taken by the investigating judge were not marred by any irregularities. The author again argued before the Brussels Criminal Court that the investigative measures carried out were null and void, but his application was rejected on 28 September 2007. On 21 October 2008, the Brussels Court of Appeal also found that the author had received a fair trial, a conclusion reiterated by the Court of Cassation on 3 June 2009, ruling on a final appeal filed by the author.

6.6 The Committee notes in particular the findings of the Brussels Court of Appeal that nothing in the investigation file could call into doubt the investigating judge's independence or impartiality; that the comments objected to by the author had been made outside the context of the investigation; and, lastly, that the accused had not exercised in a timely manner the remedies made available to them by the law in order to have the investigating judge removed. In the light of these findings and those of the other courts to which the case was referred, the Committee considers that the author has not sufficiently substantiated his claim for the purposes of article 2 of the Optional Protocol.⁶

6.7 Likewise, the Committee has taken note of the author's claim that his rights under article 15 (1) of the Covenant were violated owing to the reasoning of the Brussels Court of Appeal, which found, in its ruling of 21 October 2008, that the statute of limitations for the forgery offences charged had yet to begin to run.⁷ The Committee recalls that article 15 affords protection against conviction on account of any act or omission that did not constitute a criminal offence, under national or international law, at the time when it was committed. The Committee observes that the author's claims under article 15 fall outside the scope of this provision *ratione materiae* and, consequently, are inadmissible under article 3 of the Optional Protocol.

6.8 Concerning the subsidiary claim that the limitation period applied by the Brussels Court of Appeal in respect of the same offences violated the author's right to a fair trial, as guaranteed in article 14 of the Covenant, the Committee refers to its preceding conclusions (set out in paragraphs 6.5 and 6.6) and finds that this claim has not been sufficiently substantiated for purposes of admissibility and must therefore be rejected pursuant to article 2 of the Optional Protocol.

6.9 As for the author's claim under article 17, according to which the comments made by the investigating judge violated his right to honour and reputation, the Committee recalls that article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy, family, home or correspondence and against unlawful attacks on his or her honour and reputation. The Committee observes, however, that the Senate report to which the author objects does not mention him by name and that he has not identified any specific impact on his privacy or reputation that could be directly

⁶ See, for example, communication No. 2621/2015, *J.P.D. v. France*, inadmissibility decision adopted on 2 November 2015, para. 4.5; and communication No. 1771/2008, *Gbondo Sama v. Germany*, inadmissibility decision adopted on 28 July 2009, para. 6.5.

⁷ The Court based itself on the case law of the Court of Cassation, according to which the effects sought by using a forged tax record "tend to be produced subsequent to such use", and found that, in the case under consideration, the facts giving rise to the charges against the author (and his co-defendants) constituted the "successive and continuous manifestation of the same criminal intent, without interruption, over a period of time exceeding the limitation period for bringing proceedings". The Court concluded therefrom that "the practical effects of the forged documents remain ongoing, with the result that the statute has yet to begin running in respect of the charges against these two defendants" (the author and a second defendant) (p. 29 of the ruling).

attributed to the investigating judge's words, other than the inevitable harm arising from his criminal conviction.

6.10 Likewise, the author has not sufficiently substantiated his claim that the 10-year prohibition from exercising professional activities to which he was sentenced violated his right to honour and reputation. The Committee notes, in this regard, that a person may not invoke article 17 to challenge an attack on reputation to which his or her own actions gave rise, as, for example, in the case of someone convicted of a criminal offence. The prohibition imposed on the author in fact formed part of the penalty handed down to him by the Brussels Criminal Court in its judgment of 28 September 2007 on the merits of the case, in which he was found guilty of several criminal offences. Accordingly, the Committee concludes that this part of the communication must also be declared inadmissible pursuant to article 2 of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under articles 1, 2 and 3 of the Optional Protocol;

(b) That this decision shall be transmitted to the author and the State party, for information.
