BELARUS

Follow-up - Jurisprudence
Action by Treaty Body

CCPR A/56/40, vol. I (2001)

Chapter IV. Follow-up Activities under the Optional Protocol

...

180. The Committee's previous annual report (A/55/40, vol. I, chap. VI) contained a detailed country-by-country survey on follow-up replies received or requested and outstanding as of 30 June 2000. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not take into account the Committee's Views adopted during the seventy-second session, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

...

Belarus: Views in one case finding violations: 780/1997 - Laptsevich (A/55/40); for follow-up reply see below.

...

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

...

185. Belarus: With regard to case No. 780/1997 - Laptsevich, the Committee received a note verbale from the State party, dated 17 July 2000, stating that the competent authorities in Belarus were examining the validity of the Committee's Views. The State party pointed out that since this was the first decision received by Belarus from an international instance, it would have to assess how to comply with the Views without breaching its obligations of non-interference with the judiciary.

CCPR A/57/40, vol. I (2002)

Chapter VI. Follow-up activities under the optional protocol

...

228. The previous annual report of the Committee (A/56/40, vol. I, chap. VI) contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2001. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-fourth and seventy-fifth sessions, for which follow-up replies are not yet due. In many cases there has been no change since the previous report.

...

Belarus: Views in two cases with findings of violations:

780/1997 - Laptsevich (A/55/40); for follow-up reply, see A/56/40, paragraph 185, and paragraph [234] below;

921/2000 - Dergachev (annex IX): follow-up reply not yet due.

...

229. For further information on the status of all the Views in which follow-up information remains outstanding or in respect of which follow-up consultations have been or will be scheduled, reference is made to the follow-up progress report prepared for the seventy-fourth session of the Committee (CCPR/C/74/R.7/Rev.1, dated 28 March 2002), discussed in public session at the Committee's 2009th meeting on 4 April 2002 (CCPR/C/SR.2009). Reference is also made to the Committee's previous reports, in particular A/56/40, paragraphs 182 to 200.

Overview of follow-up replies received during the reporting period, Special Rapporteur's follow-up consultations and other developments

230. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

234. Belarus: With regard to case No. 780/1997 - Laptsevich (A/55/40), the Committee

received a note verbale from the State party, dated 17 July 2000, stating that the competent authorities in Belarus were examining the validity of the Committee's Views. By letter of 5 April 2002, the author informed the Committee that the State party had failed to abide by the Committee's Views, and sought the Committee's assistance.

...

CCPR A/58/40, vol. I (2003)

CHAPTER VI. Follow-up activities under the Optional Protocol

...

223. The previous annual report of the Committee[1] contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2002. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the seventy-seventh and seventy-eighth sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Belarus:	Views in four cases with findings of violations:
	780/1997 - *Laptsevich* (A/55/40); for follow-up reply, see A/56/40, paragraph 185 and paragraph A/57/40, paragraph 234;
	886/1999 - *Bondarenko* (annex VI); follow-up reply not yet received;
	887/1999 - *Lyashkevich* (annex VI); follow-up reply not yet received;
	921/2000 - *Dergachev*; follow-up reply not yet received.

Notes

1. [*Official Records of the General Assembly*], *Fifty-seventh Session, Supplement No. 40*(A/57/40), vol. I, chap. VI.

* The document symbol A/[Session No.] /40 refers to the *Official Record of the General Assembly*
in which the case appears; annex VI refers to the present report, vol. II.

CCPR CCPR/C/80/FU/1 (2004)

Follow-Up Progress Report submitted by The Special Rapporteur for Follow-Up on Views

Follow-up progress report

1. The current report updates the previous Follow-up Progress Report, (CCPR/C/71/R.13) [*Ed. Note: CCPR/C/71/R.13 is not publicly available*] which focused on cases in which, by the end of February 2001, no or only incomplete follow-up information had been received from States parties, or where follow-up information challenged the findings and recommendations of the Committee. In an effort to reduce the size of the follow-up report, this current report only reflects cases in which information was received from either the author or the State party from 1 March 2001 to 2 April 2004. It is the intention of the Special Rapporteur to update this report on an annual basis.

...

BELARUS:

Bondarenko v. Belarus, Case no. 886/1999, Views adopted on 3 April 2003
Lyashkevich v. Belarus, Case no. 887/1999, Views adopted on 3 April 2003

Violations found: Articles 7

Issues of case: Failure to notify the authors of the scheduled date for the execution of their sons, and of the location of their sons' grave

Remedies recommended: Information on the location of their sons burial site, and compensation for the anguish suffered.

Deadline for State party follow-up information: 23 July 2003

Follow-up information received from State party: By letter of 20 August 2003, the State party informed the Committee that the competent authorities of Belarus are carefully examining the Views and will provide information in the "nearest future".

Follow-up information received from author: With respect to Bondarenko v. Belarus no information has been received. With respect to Lyashkevich v. Belarus, the author's mother informed the Committee, by letter of 5 April 2002, that the State party had failed to implement the Views and requested its intercession.

Consultations with State party: On 31 October 2003, in a meeting with the Permanent Representative in Geneva, the Special Rapporteur indicated his concern that to date no information had been received on the implementation of Views in either of these cases nor in the other two cases in which the Committee has found violations (A/57/40, Vol.1, para. 234):

Laptsevich v. Belarus, Case no. 780/1997, Views adopted on 20 March 2000; and Dergachev v. Belarus, Case no. 921/2000, Views adopted on 2 April 2002. The State's representative noted that as Belarus is a relatively young country, the State party lacks the practical experience of how to implement the Views and would welcome any assistance the Secretariat could give in this regard. The representative confirmed his intention to obtain further information on the cases and expressed his willingness to meet more regularly in order to continue the dialogue on follow-up.

Special Rapporteur's recommendations: Reminder to be addressed to the State party.

...

CCPR A/59/40 vol. I (2004)

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

...

230. The previous annual report of the Committee[1] contained a detailed country-by-country survey of follow-up replies received or requested and outstanding as of 30 June 2003. The list that follows updates that survey, indicating those cases in which replies are outstanding, but does not include responses concerning the Committee's Views adopted during the eightieth and eighty-first sessions, for which follow-up replies are not yet due in the majority of cases. In many cases there has been no change since the previous report.*

...

Belarus: Views in six cases with findings of violations:

780/1997 - *Laptsevich* (A/55/40); for follow-up reply, see A/56/40, paragraph 185, A/57/40, paragraph 234;

814/1998 - *Pastukhov* (A/58/40); see paragraph 233 below for follow-up reply from author;

886/1999 - *Bondarenko* (A/58/40); no follow-up reply received; by letter of 20 August 2003, the State party informed the Committee that the competent authorities of Belarus were carefully examining the Views and will provide information in the "nearest future";

887/1999 - *Lyashkevich* (A/58/40); no follow-up reply received; by letter of 20 August 2003, the State party informed the Committee that the competent authorities of Belarus were carefully examining the Views and will provide information in the "nearest future";

921/2000 - *Dergachev* (A/57/40); no follow-up reply received. Despite follow-up consultations having taken place during the seventy-ninth session, no replies have been received. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that a reminder for replies be sent to the State party;

927/2000 - *Svetik* (annex IX); follow-up not yet due.

...

OVERVIEW OF FOLLOW-UP REPLIES RECEIVED DURING THE REPORTING PERIOD, SPECIAL RAPPORTEUR'S FOLLOW-UP CONSULTATIONS AND OTHER DEVELOPMENTS

231. The Committee welcomes the follow-up replies that have been received during the reporting period and expresses its appreciation for all the measures taken or envisaged to provide victims of violations of the Covenant with an effective remedy. It encourages all States parties which have addressed preliminary follow-up replies to the Special Rapporteur to conclude their investigations in as expeditious a manner as possible and to inform the Special Rapporteur of their results. The follow-up replies received during the period under review and other developments are summarized below.

...

236. Belarus: with regard to case No. 814/1998 - *Pastukov* (A/58/40): on 25 January 2004, the author stated that the State party had not implemented the Committee's Views.

_____

Notes

1/ Ibid., *Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I, chap. VI.

* The document symbol A/[session No.]/40 refers to the *Official Records of the General Assembly* in which the case appears; annex IX refers to the present report, volume II.

CCPR, A/60/40 vol. I (2005)

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

224. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for the follow-up on Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

225. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights. A total of 391 Views out of the 503 Views adopted since 1979 concluded that there had been a violation of the Covenant.

228. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party has in fact given effect to the Committee's recommendations, even though the State party did not itself provide that information.

229. The present annual report adopts a different format for the presentation of follow-up information compared to previous annual reports. The table below displays a complete picture of follow-up replies from States parties received as of 28 July 2005, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of complying with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

230. Follow-up information provided by States parties and by petitioners or their representatives since the last annual report is set out in a new annex VII, contained in Volume II of the present annual report. This, more detailed, follow-up information also indicates action still outstanding in those cases that remain under review.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location[a]	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response	Follow-up dialogue ongoing
...						
Belarus (6)	780/1997, *Lapsevich* A/55/40				X A/56/40, A/57/40	X
	814/1998, *Pastukhov* A/58/40				X A/59/40	X
	886/1999, *Bondarenko* A/58/40				X A/59/40	X
	887/1999, *Lyashkevich* A/58/40				X A/59/40	X
	921/2000, *Dergachev* A/57/40				X	X
	927/2000, *Svetik* A/59/40	X A/60/40 (annex VII)				X

[a] The location refers to the document symbol of the *Official Records of the General Assembly, Supplement No. 40,* which is the annual report of the Committee to the respective sessions of the Assembly.

CCPR, A/60/40 vol. II (2005)

...

Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/59/40).

...

State party	**BELARUS**
Case	Svetik, 927/2000
Views adopted on	8 July 2004
Issues and violations found	The limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3. Therefore, the author's rights under article 19, paragraph 2 of the Covenant had been violated.
Remedy recommended	Effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party response	18 November 2004
Date of reply	12 July 2005
State party response	The competent authorities examined the decision by which the Krichevsk Court fined the author and came to the conclusion that it was adequate. The Supreme Court studied the Committee's Views, but did not find grounds for reopening the case. The author's responsibility was engaged not for the expression of his political opinions, but for his public call to boycott the local elections. Such call amounts to pressure on the conscience, will and behaviour of individuals to make them carry out particular acts or to refrain from carrying out certain acts. Accordingly, the State party concludes that it cannot agree with the Committee's findings that the author is a victim of violation of article 19,

paragraph 2, of the Covenant.

CCPR, CCPR/C/SR.2366 (2006)

Human Rights Committee
Eighty-sixth session
Summary record of the second part (public)* of the 2366th meeting
Held at Headquarters, New York, on Thursday, 30 March 2006, at 3 p.m.

Follow-up on Views under the Optional Protocol

Progress report of the Special Rapporteur for Follow-up on Views

1. Mr. Ando (Special Rapporteur for Follow-up on Views) introduced his report, which compiled information received during the eighty-fifth and eighty-sixth sessions of the Committee. He wished to request decisions from the plenary in relation to two cases.

...

13. Mr. Wieruszewski expressed concern that precise information on the status of cases was not always available. For example, in the case of Ominayak v. Canada (Communication No. 167/1984 (pp. 10-11)) he wondered if there were any new factual elements; with regard to the case of Malakhovsky and Pikul v. Belarus (Communication No. 1207/2003 (pp. 8-10)), the State party continued to refute the Committee's Views yet despite the apparent lack of any new information, the State party's response had been sent to the author for comment. He asked if there was any point in sending the State party's response to the author if there was no new information and wondered whether the Committee needed to review its procedures for follow-up on Views.

14. The Chairperson noted that the Bureau agreed with the need to review follow-up procedures and was asking interested experts to sign up to participate in discussions on how to make follow-up procedures more effective. With a view to having the progress report as up-to-date as possible, it could be noted, for example, that the Committee had raised the case of Ominayak v. Canada (Communication No. 167/1984) in its concluding observations on the last periodic report of Canada in October.

15. Sir Nigel Rodley said the current procedure seemed to be that either the Committee was satisfied, at least on the facts, or the response had been unsatisfactory, in which case consideration of the matter would continue. With regard to the Malakhovsky and Pikul v. Belarus case (Communication No. 1207/2003), perhaps the comment could be worded to express the Committee's regret at the State Party's refusal to address the issue of the compatibility of the application of its legislation with the Covenant, although any amendment could likewise be postponed pending the Committee's review of its follow-up procedures.

16. Mr. Lallah, referring to the Ominayak case, said he supported the Chairperson's suggestion that the Committee's observations on its dialogue with Canada should be included in the comments section. It would also be useful to include the date when the State party had been requested to provide an update, although only if the request had been made subsequent to the

dialogue with the State party.

17. The Chairperson said that the request had been made after the dialogue and the date could therefore be mentioned.

18. Sir Nigel Rodley, referring to the Malakhovsky and Pikul v. Belarus case, asked for clarification on the Committee's options, as he did not wish to confuse the situation or make any new departures before the Working Group on Communications had commented.

19. Mr. Ando said that, as the Committee was aware, the follow-up procedure had developed gradually for more than 10 years. Unfortunately, the main obstacle to the Special Rapporteur's carrying out his mandate was the reluctance of States to respond honestly or at all. In most of the cases under discussion, reminders had been sent to the State party several times, and yet the Committee continued to await a reply. Although there might be ways to make the procedure more effective, it was difficult to move forward in the absence of responses from Governments.

20. The Chairperson said that the Committee understood the difficulties involved in carrying out the Special Rapporteur's mandate. Nonetheless, a number of positive results had been achieved, and improvements had been made to the procedure, namely the systematic follow up of pending cases during the dialogue on periodic reports with State party delegations, and the inclusion of references to Views in the concluding observations. The Committee should adopt the practice of citing cases of uncooperative States parties at press conferences, while ensuring no discrimination between States. Follow-up missions should also be carried out, and indeed the necessary funding had been provided but had since been re-allocated. The legal nature of the Optional Protocol should be studied by the Working Group when it considered ways of improving the follow-up procedure.

21. As to Belarus, Sir Nigel Rodley's suggestion might not be viable given that the State's reply had recently been sent to the author for comment.

22. Sir Nigel Rodley said that his remarks on discontinuing the case had clearly been premature. Nonetheless, he was sympathetic to Mr. Wieruszewski's position and pointed out that the author was in no better position than the Committee to comment on such a response by the State party. He endorsed the Chairperson's views that the follow-up procedure had become professionalized to the extent that the Committee was comfortable to have it in the public domain.

23. The Chairperson suggested that the Committee should strengthen its comments to read "the Committee notes that the State party is maintaining its position that the court decisions were in compliance with domestic law. The Committee notes that the State party is not responding to the Committee's conclusions that it is the legislation that is contrary to the Covenant."

24. Mr. Schmidt (Team Leader, Petitions Unit) said that one reason why unsatisfactory replies from States parties had not led to the termination of follow-up proceedings was that it had been found useful, in combination with the concluding observations and the mandates of the Commission on Human Rights, to keep a degree of pressure on the State party on various fronts.

In respect of Belarus, for example, the Commission on Human Rights Special Rapporteur on the situation of human rights in Belarus had requested the relevant observations of the Human Rights Committee and other treaty bodies that might be useful on visits to the State party. Similarly, on the High Commissioner's recent trip to the Russian Federation, a number of Russian Views pending follow-up had been included in her briefing notes, and she had undertaken to raise them with the authorities, which would not have been possible had the cases been closed.

...

CCPR, CCPR/C/SR.2392 (2006)

HUMAN RIGHTS COMMITTEE
Eighty-seventh session
SUMMARY RECORD OF THE 2392nd MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 26 July 2006, at 11 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL (agenda item 7)

Report of the Special Rapporteur for follow-up on Views (CCPR/C/87/R.3)

...

9. [Mr. ANDO] During the current session, he had met with a representative of the Permanent Mission of Belarus to discuss further action in respect of Svetik v. Belarus (communication No. 927/2000). The outcome of the meeting had been encouraging. The entry in the section entitled “Further action taken or required” would be updated accordingly.

...

CCPR, A/61/40 vol. I (2006)

...

CHAPTER VI FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

227. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

228. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

229. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

230. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

231. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

232. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2006, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of

case entries convey an idea of the difficulties in categorizing follow-up replies.

233. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/60/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatis-factory response	No follow-up response received	Follow-up dialogue ongoing
...						
Belarus (10)	780/1997, *Lapsevich* A/55/40				X A/56/40, A/57/40	X
	814/1998, *Pastukhov* A/58/40				X A/59/40	X
	886/1999, *Bondarenko* A/58/40				X A/59/40	X
	887/1999, *Lyashkevich* A/58/40				X A/59/40	X
	921/2000, *Dergachev* A/57/40				X	X
	927/2000, *Svetik* A/59/40	X A/60/40 (annex V to this report), A/61/40				X
	1009/2001, *Shchetko* A/61/40	Not due				
	1022/2001, *Velichkin*				X	X

	A/61/40				A/61/40	
	1100/2002, *Bandazhewsky* A/61/40	X A/61/40				X
	1207/2003, *Malakhovsky* A/60/40	X A/61/40		X		X
...						

CCPR, A/61/40 vol. II (2006)

...

Annex VII

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/60/40).

...

State party	**BELARUS**
Case	Svetik, 927/2000
Views adopted on	8 July 2004
Issues and violations found	The limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3. Therefore, the author's rights under article 19, paragraph 2, of the Covenant had been violated.
Remedy recommended	Effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party response	18 November 2004
Date of State party's response	12 July 2005
State party response	As presented in its interim report from the eighty-fourth session, the State party had responded on 12 July 2005. It confirmed that the Supreme Court had studied the Committee's Views, but had not found any grounds to reopen the case. The author had been convicted not for the expression of his political opinions, but for his public call to boycott the local elections. Accordingly, the State party concluded that it cannot agree with the Committee's findings that the author is a victim of violation of article 19, paragraph 2, of the Covenant.
Author's response	On 19 February 2006, the author confirmed the outcome of the Supreme Court consideration of this case. His application did not

reveal any new grounds for the annulment of previous court decisions, "notwithstanding the change of law and the examination of his case by the Human Rights Committee". He submits that he also appealed his case to the Constitutional Court (exact date not provided), requesting the annulment of the Supreme Court's judgement. By letter of 2 December 2004, the Constitutional Court informed him that it is not empowered to interfere with the work of ordinary jurisdictions. The author claims that the State party has not published the Committee's Views.

Further action taken

During the eighty-seventh session, on 24 July 2006, follow-up consultations were held with Mr. Lazarev, First Secretary of the Mission of Belarus, Mr. Ando, Special Rapporteur on the Follow-up to individual complaints and the Secretariat.

Mr. Ando explained the follow-up procedure and his role as Rapporteur. He highlighted to Mr. Lazarev that the State party had only responded to the Committee's Views in two of the nine cases in which the Committee had found violations of the Covenant (Svetik, 927/2000 and Malakhovsky, 1207/2003). Mr. Lazarev explained that they had responded to the Working Group on Arbitrary

Detention in the case of Bandazhewsky, 1100/2002, in which it informed the working group that the author had been released pursuant to an amnesty. He assured Mr. Ando that he would forward a copy to the secretariat.

On the State party's response to Malakhovsky, in which the State party challenged the Committee's Views, Mr. Lazarev explained that this was a very famous case in Belarus and the issue of religious freedom is a very sensitive one. He stated that strict legislation on religious groups was introduced in the State party following several suicides of members of cults. Thus, the social context as well as the purely legal context should be recognized by the Committee, as well as, the practical implications for the State party of the Committee's Views. In this context, he expressed the need for more guidance from the Committee on the remedies expected with respect to its Views.

The necessity to respond on the other seven cases in which the Committee found violations was impressed upon Mr. Lazarev and in particular the need to provide remedies to the authors of these violations. An effort to provide relief to the authors in these cases would demonstrate a positive attitude towards the Committee's work, as would a reconsideration of the State party's response to the Views in Svetik, 927/2000 and Malakhovsky, 1207/2003. Mr. Lazarev expressed his appreciation of the meeting with the Rapporteur and

	ensured him that he would relay the Rapportuer's concerns to his capital.
Case	Velichkin, 1022/2002
Views adopted on	20 October 2005
Issues and violations found	Freedom to impart information - article 19, paragraph 2
Remedy recommended	An effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party response	20 February 2006
Date of State party's response	None
State party response	None
Author's response	On 10 February 2006, the author submits that the State party has not implemented the Committee's decision. He contends that on 9 January 2006, he complained to the Deputy Chairman of the Supreme Court, asking him to "send him the ruling of the Chairman of the Supreme Court annulling the judgem0ent of the Lenin District Court of Brest of 15 January 2001", in light of the Committee's Views. On 13 January 2006, the Supreme Court replied that his application had been examined but that no grounds were found to annul the District Court ruling of 15 January 2001, in which he was obliged to pay a fine.
Case	Bandajevsky, 1100/2002
Views adopted on	28 March 2006
Issues and violations found	Arbitrary arrest, unlawful detention, inhuman conditions of detention, court not established by law, no review - Articles 9 paragraphs 3, 4, 10, paragraph 1, 14, paragraphs 1 and 5.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Bandajevsky with an effective remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the

	future.
Due date for State party response	6 July 2006
Date of State party's response	On 29 August 2005, the State party replied to the Working Group on Arbitrary Detention. This information was not provided to the HRC until 24 July 2006.
State party response	It states that in accordance with the ruling of 5 August 2005 by the court of Diatlov region, Grodno oblast, the author was released early from serving the remaining of sentence of 18 June 2001.
Case	Malakhovsky and Pikul, 1207/2003
Views adopted on	12 August 2003
Issues and violations found	Refusal to register a religious organization - 18, paragraphs 1 and 3
Remedy recommended	Pursuant to article 2, paragraph 3 (a), of the Covenant, the Committee considers that the authors are entitled to an appropriate remedy, including a reconsideration of the authors' application in accordance with the principles, rules and practice in force at the time of the authors' request, and duly taking into account of the provisions of the Covenant.
Due date for State party response	10 November 2005
Date of State party's response	13 January 2006
State party response	The State party disagrees with the Committee's conclusion and reiterates its arguments made on the admissibility and merits of the case. It affirms that the court rejected the author's claims on the refusal of the Committee on Religions and Nationalities to register the Statute of the Krishna communities' association because of the absence of an approved legal address. The requirement to have a legal address for religious organizations and the limitations on the use of buildings for other religious purposes (invoked by the Committee in its Views in paragraphs 7.6 and 8) is set up by Belarusian law. Courts are judicial bodies and adopt decisions in the light of the

legislation in force. The decision of the Court of the Central District of Minsk was taken on the basis of the legislation in force and evidence in the case, and is lawful and well-founded. Under article 17 of the Law on freedom of religion and religious organizations, statutes of religious organizations must provide information on their location. In addition, under article 50 (3) of the Civil Code of Belarus the names and location of legal persons, including religious organizations, must be reflected in their statutory documents.

The use of habitation premises for non-residential purposes is made with the agreement of the local executive and administrative organs, in accordance with the rules of sanitary hygiene and fire safety (article 8, paragraph 4, Habitation Code of Belarus). The statutory documents, submitted for the registration of the association, referred to a house at No. 11 on Pavlov street in Minsk. This building was examined and infringements of the sanitary and fire safety regulations were established. This was confirmed by the documents presented to the court by the Sanitary-epidemiological service and the Emergency situations' service of the Central district of Minsk. It is for this reason, that this house's address could not be used as the legal address for the association. According to the State party, in these circumstances, the court had correctly concluded that the refusal to register the religious association was lawful.

Author's response None

Committee's Decision The Committee notes that the State party's response on its Views is a reiteration of information provided prior to consideration. The State party submits that the courts' decisions were in compliance with domestic law but does not respond on the Committee's findings that the law itself has been found to be contrary to the rights protected under the Covenant. The Committee observes that the State party does not respond to its concerns.

CCPR, CCPR/C/SR.2450 (2007)

Human Rights Committee
Eighty-ninth session
Summary record of the 2450th meeting
Held at Headquarters, New York, on Thursday, 29 March 2007, at 10 a.m.

...

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/89/R.5)

1. **Mr. Shearer** (Special Rapporteur for follow-up on Views) introduced his report, which compiled information received during the eighty-eighth and eighty-ninth sessions of the Committee...

2. With regard to the cases of *Bondarenko v. Belarus* (communication No. 886/1999) and *Lyashkevich v. Belarus* (communication No. 887/1999), the State party contested the Committee's Views, citing the lack of a definition of cruel, inhumane or degrading treatment, and also noted that its Parliament had asked the Constitutional Court to review the provisions of the Criminal Code relating to the death penalty in the light of the Constitution and the State party's international obligations. The Committee's comments regarding further action would indicate that the Committee regretted the State party's refusal to accept the Committee's Views and considered the dialogue ongoing. The comments would indicate that the Secretariat and the Office of the United Nations High Commissioner for Human Rights were ready to assist the State party in the examination of its obligations under international law with respect to the imposition of the death penalty and also request further information on the issues to be examined by the Constitutional Court and the likely time frame for consideration. In the cases of *Svetik v. Belarus* (communication No. 927/2000) and *Korneenko v. Belarus* (communication No. 1274/2004) the State party likewise contested the Committee's Views. The Committee's comments with regard to both cases would be the standard phrasing according to which the Committee regretted the State party's refusal to accept the Committee's Views and considered the dialogue ongoing.

...

CCPR, A/62/40 vol. I (2007)

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

213. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

214. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information has been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 452 Views out of the 570 Views adopted since 1979 concluded that there had been a violation of the Covenant.

215. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or only relate to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an *ex gratia* basis.

216. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's Views.

217. In many cases, the Committee secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

218. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2007, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The Notes following a number of case entries

convey an idea of the difficulties in categorizing follow-up replies.

219. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/61/40, vol. I, chap. VI) is set out in annex VII to volume II of the present annual report.

FOLLOW-UP RECEIVED TO DATE FOR ALL CASES OF VIOLATIONS OF THE COVENANT

State party and number of cases with violation ...	**Communication number, author and location**	**Follow-up response received from State party and location**	**Satisfactory response**	**Unsatisfactory response**	**No follow-up response received**	**Follow-up dialogue ongoing**
Belarus (14)	780/1997, *Laptsevich* A/55/4				X A/56/40, A/57/40	X
	814/1998, *Pastukhov* A/58/40				X A/59/40	X
	886/1999, *Bondarenko* A/58/40	X A/62/40			X A/59/40	X
	887/1999, *Lyashkevich* A/58/40	X A/62/40			X A/59/40	X
	921/2000, *Dergachev* A/57/40				X	X
	927/2000, *Svetik* A/59/40	X A/60/40 (annex V to this report), A/61/40 A/62/40				X A/62/40
	1009/2001, *Shchetko* A/61/40	Not due			X	
	1022/2001, *Velichkin* A/61/40				X A/61/40	X
	1039/2001, *Boris et al.* A/62/40	X A/62/40				X
	1047/2002, *Sinitsin, Leonid* A/62/40				X	
	1100/2002, *Bandazhewsky*	X A/62/40				X

State party and number of cases with violation	Communication number, author and location	Follow-up response received from State party and location	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
	A/61/40					
	1207/2003, *Malakhovsky* A/60/40	X A/61/40		X		X
	1274/2004, *Korneenko* A/62/40	X A/62/40				X A/62/40
	1296/2004, *Belyatsky* A/62/40	Not yet due				
...						

CCPR, A/62/40 vol. II (2007)

Annex IX

FOLLOW-UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/61/40).

...

State party	**BELARUS**
Case	Bondarenko and Lyashkevich, 886/1999 and 887/1999
Views adopted on	3 April 2003
Issues and violations found	Secrecy of date of execution of family member and place of burial - article 7.
Remedy recommended	An effective remedy, including information on the location where the authors are buried, and compensation for the anguish suffered by the family.
Due date for State party response	23 July 2003
Date of reply	1 November 2006
State party response	It refers to the notion of torture as defined in article 1 of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment, and notes that this notion does not include pain or anguish that result from lawful sanctions, that are inseparable from the sanctions or have been caused by chance as a result of their application. Neither in the Convention not in any other international legal act it is not defined what has to be understood under the terms of other cruel, inhumane, or degrading or humiliating the human dignity treatment or punishment. The State party states that torture or other cruel acts are criminalised in its Criminal Code (arts. 128 (2) and (3), and art. 394). It states that the death penalty is applied in Belarus only in relation to a limited number of particularly cruel crimes,

accompanied by premeditated deprivation of life under aggravating circumstances and may not be imposed on individuals that have not attained the age of 18, and against women and man that are over 65 at the moment of commission of the crime. A death sentence may be substituted by a life imprisonment.

Pursuant to article 175 of the Criminal Execution Code, *CEC*, a death sentence that has become executory can only be carried out after the receipt of official confirmation that all supervisory appeals have been rejected and that the individual was not granted a pardon. Death sentences are carried out by firing squad in private. The execution of several individuals is carried out separately, in the absence of the other convicted. All executions are carried out in the presence of a prosecutor, a representative of the penitentiary institution where the execution takes place, and a medical doctor. On exceptional basis, a prosecutor may authorize the presence of additional persons.

Pursuant to article 175 (5), of the *CEC*, the penitentiary administration of the institution where the execution took place is obliged to inform the court that has pronounced the sentence that the execution was carried out. The court then informs the relatives of the executed individual. The body of the executed is not given to the family, and no information about the burial place is provided. The State party concludes that the death penalty in Belarus is provided by law and constitutes a lawful punishment applied to individuals that have committed specific particularly serious crimes. The refusal to inform the relatives of a sentenced to death of the date of execution and burial place is also provided by law (the *CEC*).

In light of the previous, the State party affirms that in the present cases, the moral anguish and stress caused to the mothers of the sentenced to death cannot be seen as the consequence of acts, that had the objective to threaten or punish the families of the convicted, but rather as anguish, that occur as a result of the application of the State party's official organs of a lawful sanction and are not separable from the this sanction, as provided in article 1 of the Convention against Torture.

In connection with the authorities' refusal to deliver the body of those executed for burial, and the refusal to divulge the burial place, the State party adds that these measures are provided by law not with the aim of punishing or threatening the relatives of those executed, leaving them in a state of uncertainty and moral anguish, but because, as it was shown by the practice of other

States that apply the death penalty, burial places of criminals sentenced to death constitute “pilgrimage” sites for individuals of mental instability.

In relation to the case of Mr. Lyashkevich, the State party adds that the main allegations of the author relate to her son’s alleged conviction on the grounds of indirect evidence, in violation of article 6, of the Covenant. In this relation, the State party observes that the Committee's finding of a violation of Mrs. Staselovich’s (the mother of the victim and author of the communication) rights under article 7, of the Covenant, because she was not informed of the date of execution of her son and the authorities' refusal to reveal his burial place, differs from the object of the communication. In addition, neither the author nor her counsel have ever mentioned that the lack of information about the date of execution or the burial site location has caused any psychological harm to the author; they did not appeal to the State party’s competent authorities in this relation.

The State party also notes that the author has failed to provide comments on the State party’s merits observations, in spite of the fact that several reminders were sent to her in this regard. In light of the above information, the State party concludes that it cannot agree with the Committee's conclusions in the two communications, that article 7, of the Covenant was violated.

Finally, the State party informs the Committee that its Parliament has asked the Constitutional Court to examine the question of the compliance of the relevant Criminal Code provisions regulating the application of the death penalty, with the provisions of the Constitution and the State party's international obligations.

Further action taken

On 30 October 2006, follow-up consultations were held with Mr. Lazarev, First Secretary of the Mission of Belarus, Mr. Shearer, Special Rapporteur on the Follow-up to individual complaints and the Secretariat.

On the State party's response to Malakhovsky, in which the State party challenged the Committee's Views, Mr. Lazarev reiterated what he had said in an earlier meeting that this was a very famous case in Belarus and the issue of religious freedom is a very sensitive one. He stated that strict legislation on religious groups was introduced in the State party following several suicides of members of cults. Thus, the social context as well as the purely legal context should be recognized by the Committee. The

	Rapporteur noted that it was unlikely that the State party would change its view of this decision and informed Mr. Lazarev that in such circumstances where a State party provides cogent arguments against the Committee's findings the latter while regretting its position and considering the dialogue ongoing will pursue the matter less vigorously. The necessity to respond on the other seven cases in which the Committee found violations was impressed upon Mr. Lazarev and in particular the need to provide remedies to the authors of these violations. Mr. Lazarev expressed his appreciation of the meeting with the Rapporteur and ensured him that he would relay the Rapporteur's concerns to his capital.
Committee's Decision	The Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.
Case	Bandajevsky, 1100/2002
Views adopted on	28 March 2006
Issues and violations found	Arbitrary arrest, unlawful detention, inhuman conditions of detention, court not established by law, no right to review - articles 9, paragraphs 3, and 4; 10, paragraph 1; 14, paragraphs 1 and 5.
Remedy recommended	In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide Mr. Bandajevsky with an effective remedy, including appropriate compensation. The State party is also under an obligation to prevent similar violations in the future.
Due date for State party response	6 July 2006
Date of reply	On 29 August 2005, the State party replied to the Working Group on Arbitrary Detention. This information was not provided to the Committee until 24 July 2006.
State party response	It states that, in accordance with the ruling of 5 August 2005 by the court of Diatlov region, Grodno oblast, the author was released early from serving the remainder of his sentence delivered on 18 June 2001.
Author's response	On 22 August 2006, the author confirms that he was released, but

	informs the Committee that he has not received any compensation.
Case	Svetik, 927/2000
Views adopted on	8 July 2004
Issues and violations found	The limitation of the liberty of expression did not legitimately serve one of the reasons enumerated in article 19, paragraph 3. Therefore, the author's rights under article 19, paragraph 2 of the Covenant had been violated.
Remedy recommended	Effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party response	18 November 2004
Date of reply	12 July 2005
State party response	As presented in its interim report from the eighty-fourth session, the State party had responded on 12 July 2005. It confirmed that the Supreme Court had studied the Committee's Views, but had not found any grounds to reopen the case. The author had been convicted not for the expression of his political opinions, but for his public call to boycott the local elections. Accordingly, the State party concluded that it cannot agree with the Committee's findings that the author is a victim of violation of article 19, paragraph 2, of the Covenant.
Further action taken	See above for information on a follow-up meeting that was held in October 2006.
Committee's Decision	The Committee regrets the State party's refusal to accept the Committee's Views and considers the dialogue ongoing.
Case	Viktor Korneenko, 1274/2004
Views adopted on	31 October 2006
Issues and violations found	Freedom of association - article 22, paragraph 1.
Remedy	An appropriate remedy, including reestablishment of "Civil

recommended	Initiatives" and compensation.
Due date for State party response	5 February 2007
Date of reply	27 February 2006

State party response

The State party notes that if the Committee had requested further clarification on certain issues (the subject of paragraphs 7.5 and 7.6 of the Views) prior to consideration of the case it could have ensured a proper examination of and a more balanced decision by the Committee.

It submits that the Gomel regional association "Civil Initiatives" was dissolved in compliance with the Belarus Constitution and law. Article 29, paragraph 2, of the Law "On Public Associations" of 4 October 1994, stipulates that an association can be dissolved by court order if it again undertakes, within a year, activities for which it had already received a written warning. Dissolution of a public association by court order follows internationally established practice of dissolving of this type of legal entities. In the course of its activities, "Civil Initiatives" repeatedly violated domestic law.

On 13 May 2002, the Department of Justice gave a written warning to the "Civil Initiatives'" about improper use of equipment, received through foreign grants. Paragraph 4, part 3, clause 5.1, part 3, of Presidential Decree No. 8 "On Certain Measures for the Improvement of the Procedure for Receipt and Use of Foreign Grants" of 12 March 2001, prohibits the use of such grants for, inter alia, the preparation of gatherings, meetings, street processions, demonstrations, pickets, strikes, the production and dissemination of propaganda materials, as well as the organization of seminars and other forms of propaganda activities among general public. Violation of the Decree's requirements by the trade unions and other public associations, as well as receipt of foreign grants by political parties and their organizational structures may result in their dissolution through the application of relevant procedures even after a single violation. Lawfulness of the first written warning was confirmed by the Gomel Regional Court on 4 November 2002 and by the Supreme Court on 23 December 2002.

Despite the first warning, "Civil Initiatives" once again violated domestic law. From November 2001 to March 2003, Department

of Justice undertook an inspection of "Civil Initiatives'" statutory activities and found out that it used foreign grants for the production of propaganda material, as well as for other forms of propaganda activities among the general public. The State party submits a list of materials that, in its opinion, contains propaganda. The arguments of "Civil Initiatives'" representatives that these materials were produced with the use of equipment, other than that received through foreign grants, are not corroborated by sufficient and reliable evidence.

Contrary to article 50 of the Belarus Civil Code, "Civil Initiatives" engaged in the establishment of unregistered district branches and a number of independent organizational structures as "resource centres" not envisaged by its own Statutes; omitted reference to its proper legal status as a public association; distorted its title in the information bulletins; violated its own Statutes and Belarus Electoral Code and did not bring its letterhead in compliance with legal requirements. The State party submits a short description of the facts illustrating each of the above violations of the law related to the procedure and requirements applicable to the legal entity's documentation. Article 57, paragraph 2, sub-paragraph 2, of the Belarus Civil Code envisages a procedure for the dissolution of a legal entity by court order when it conducts its activities without a license; or when the activities are prohibited by law; or with repeated and serious violations of law; or systematically conducting activities that run contrary to its Statutes.

In view of the abovementioned violations, the Department of Justice filed a suit in the Gomel Regional Court, requesting the dissolution of "Civil Initiatives". The latter was dissolved by court order on 17 June 2003. This decision was upheld by the Supreme Court on 14 August 2003, which concluded that the Gomel Regional Court had thoroughly examined all the facts and pertinent evidence and correctly applied substantive and procedural law. Lawfulness and relevance of the decision on dissolution was examined by the Supreme Court on cassation and through the supervisory review procedure, as well as by the Republican Prosecutor's Office also through the supervisory review procedure. The State party submits that there were no grounds for the review of the aforementioned judicial decisions.

Further action taken

See above for information on a follow-up meeting that was held in October 2006.

Committee's

The Committee regrets the State party's refusal to accept the

Decision	Committee's Views and considers the dialogue ongoing.

...

CCPR, CCPR/C/SR.2564/Add.1 (2008)

HUMAN RIGHTS COMMITTEE
Ninety-third session
SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 2564th MEETING
Held at the Palais Wilson, Geneva,
on Wednesday, 23 July 2008 at 11.25 a.m.

...

FOLLOW-UP TO CONCLUDING OBSERVATIONS ON STATE REPORTS AND TO VIEWS UNDER THE OPTIONAL PROTOCOL

...

Follow-up progress report of the Human Rights Committee on individual communications (CCPR/C/93/R.5)

40. Mr. SHEARER, Special Rapporteur for follow-up on communications, introduced the Committee's progress report on individual communications.

...

44. In the fourth case, relating to freedom of association in Belarus, the State party had contested the Committee's Views. The author had responded in March 2008, saying that the State party had not taken any measures to implement the Committee's Views, and that the NGO that had been deregistered had not been re-registered. Although the author's response had been transmitted to the State party with a deadline for comments of 26 June 2008, no response had yet been received from it. The Committee should reiterate its decision and express its regret that the State party had failed to respond. The dialogue could be considered ongoing.

...

The meeting rose at 1.05 p.m.

CCPR, A/63/40 vol. I (2008)

VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

187. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up to Views to this effect. Mr. Ando has been the Special Rapporteur since March 2001 (seventy-first session).

188. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 429 Views out of the 547 Views adopted since 1979 concluded that there had been a violation of the Covenant.

189. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an ex gratia basis.

190. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much-belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

191. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

192. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to 7 July 2008, in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up to Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

193. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/62/40) is set out in annex VII to volume II of the present annual report.

...						
Belarus (14)	780/1997, *Laptsevich* A/55/40				X A/56/40, A/57/40	X
	814/1998, *Pastukhov* A/58/40				X A/59/40	X
	886/1999, *Bondarenko* A/58/40	X A/59/40, A/62/40 and A/63/40				
	887/1999, *Lyashkevich* A/58/40	X A/59/40, A/62/40 and A/63/40				
	921/2000, *Dergachev* A/57/40				X	X
Belarus (*cont'd*)	927/2000, *Svetik* A/59/40	X A/60/40, A/61/40 and A/62/40				X A/62/40
	1009/2001, *Shchetko* A/61/40				X	
	1022/2001, *Velichkin* A/61/40				X A/61/40	X
	1039/2001, *Boris et al.* A/62/40	X A/62/40				X
	1047/2002, *Sinitsin, Leonid*				X	

	A/62/40					
	1100/2002, *Bandazhewsky* A/61/40	X A/62/40				X
	1207/2003, *Malakhovsky* A/60/40	X A/61/40		X		X
	1274/2004, *Korneenko* A/62/40	X A/62/40				X A/62/40
	1296/2004, *Belyatsky* A/62/40	A/63/40				X
...						

CCPR, A/63/40, vol. II (2008)

Annex VII

FOLLOW UP OF THE HUMAN RIGHTS COMMITTEE ON INDIVIDUAL COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

This report sets out all information provided by States parties and authors or their counsel since the last Annual Report (A/62/40).

...

State party	**BELARUS**
Case	**Belyatsky Aleksander, 1296/2004**
Views adopted on	24 July 2007
Issues and violations found	Dissolution of NGO - article 22, paragraph 2.
Remedy recommended	Appropriate remedy, including the re-registration of *Viasna* and compensation.
Due date for State party response	30 November 2007
Date of reply	20 November 2007
State party response	On 20 November 2007, the State party contested the Views and submitted that article 22 of its Constitution proclaims the principle of equality before the law and equal protection of the rights and legitimate interests of everyone without discrimination. Article 52 requires everyone within the territory of the State party to abide by its Constitution and laws and to respect national traditions. Under article 45, paragraphs 1 and 2, of the Belarus Civil Code, legal entities can have civil rights conforming to the objectives of their statutory activities, as well as to the subject matter of the activities if it is stipulated by the statutes; and carry obligations relating to these activities. The rights of legal entities can only be restricted under the procedure established by law. Article 57 of the Civil Code establishes general provisions on the dissolution of legal entities Article 57, paragraph 2, of the Civil

Code envisages a procedure for dissolution of a legal entity by court order when it is engaged in unlicensed activities or the activities are prohibited by law or when it has committed repeated or gross breaches of the law. Therefore, in order for a court to take a decision on the dissolution of a legal entity, it is sufficient to establish that a single gross breach of the law took place. Administration of justice in Belarus follows the same interpretation of article 57, paragraph 2, of the Civil Code. The Committee's Views in the case on the dissolution of *Viasna*, however, erroneously refers to the "repeated gross breaches of the law".

Article 110 of the Constitution guarantees the principle of independence of the judiciary. The task of evaluating whether the breach of the law in question was gross is attributed to the courts, which they do at their own discretion, based on the comprehensive, complete and objective examination of all the facts, and proof and are guided in it only by law.

The State party reiterated that the decision on *Viasna*'s dissolution was taken by the Belarus Supreme Court on 28 October 2003, as it did not comply with the established procedure of sending its observers to the meetings of the electoral commission and to the polling stations. This information was described in the written warning issued to *Viasna* by the Ministry of Justice on 28 August 2001 (this warning was not appealed) and in the ruling of the Central Electoral Commission on Elections and Conduct of Republican Referendums of 8 September 2001. This ruling was based on the inspections conducted by the Ministry of Justice and the Belarus Prosecutor's Office.

Author's response

On 4 March 2008, the author submits that the State party did not take any measures to give effect to the Committee's Views. Namely, *Viasna* has not been re-registered, compensation has not been paid and the Views have not been published in the State-run mass-media. The author strongly objects to the State party's assertion that article 57 of the Civil Code was correctly applied by the Supreme Court in considering a civil case on the dissolution of *Viasna*. He reiterates that under article 117 of the Civil Code, the legal regime applicable to public associations is subject to a *lex specialis*. Article 57 of the Civil Code does not contain any provision to the effect that it is applicable even when *lex specialis* exists. The Law "On Public Associations" contains a list of grounds for the dissolution of a public association; and the Belarus Constitution provides for an exhaustive list of restrictions of the right to freedom of association.

Article 5 of the Constitution prohibits the creation and activities of political parties and other public associations that aim at changing the constitutional order by force, or conduct propaganda of war, ethnic, religious, or racial hatred. Under article 23 of the Constitution, restriction of personal rights and liberties shall be permitted only in cases specified in law, in the interest of national security, public order, the protection of the morals and health of the population, as well as rights and liberties of other persons. The author, therefore, reiterates his initial claim that the State party has unlawfully restricted his right to freedom of association by taking a decision on the dissolution of *Viasna*.

The author also reiterates his initial claim that *Viasna* was dissolved by the Supreme Court for the same activities, as those described in the Ministry of Justice's written warning of 28 August 2001, and for which *Viasna* has already been reprimanded. In turn, this written warning served as a basis for the ruling of the Central Electoral Commission on Elections and Conduct of Republican Referendums of 8 September 2001. In its follow-up submission of 19 November 2007, the State party conceded that *Viasna* was dissolved by the Supreme Court for the same activities (breach of electoral laws before and during the 2001 Presidential election), for which it has already been reprimanded in the Ministry of Justice's written warning. The author notes that in the State party's earlier submissions of 5 January 2001, it denied that *Viasna* was penalized twice for identical activities. The State party stated then that the Ministry of Justice's written warning of 28 August 2001 was issued in response to *Viasna*'s violation of record keeping and not because of the violation of electoral laws.

The author submits that the State party failed to advance any plausible arguments as to whether the grounds on which *Viasna* was dissolved were compatible with any of the criteria listed in article 22, paragraph 2, of the Covenant. Therefore, the author is of the opinion that his rights under article 22, paragraph 1, have been violated, and that the dissolution of *Viasna* was disproportionate, especially in the light of the introduction in 2006 of criminal sanctions for activities carried out by an unregistered or dissolved association.

Committee's Decision

The Committee reiterates its Decision made during the ninety-second session of the Committee. It noted that the State party had reiterated information provided prior to consideration of the case by the Committee, and had argued that the court's decisions were in compliance with domestic law but had not

	responded on the Committee's findings that the application of the law had been found to be contrary to the rights protected under the Covenant. The Committee observed that the State party had not responded to its concerns and regretted its refusal to accept the Committee's Views. It considers the dialogue ongoing.
Case	**Bondarenko and Lyashkevich, 886/1999 and 887/1999**
Views adopted on	3 April 2003
Issues and violations found	Secrecy of date of execution of family member and place of burial of victims - article 7.
Remedy recommended	An effective remedy, including information on the location where the sons of the authors are buried, and compensation for the anguish suffered by the family.
Due date for State party response	23 July 2003
Date of reply	26 June 2007 (the State party had replied on 1 November 2006)
State party response	On 1 November 2006, the State party argued inter alia that neither the Convention nor in any other international legal act defines the meanings of other cruel, inhumane, or degrading treatment or punishment and that torture or other cruel acts are criminalized in its Criminal Code (articles 128 (2) and (3), and article 394). It stated that the death penalty is applied in Belarus only in relation to a limited number of particularly cruel crimes, accompanied by premeditated deprivation of life under aggravating circumstances and may not be imposed on individuals who have not attained the age of 18, or against women and men that are over 65 at the moment of commission of the crime. A death sentence may be substituted by life imprisonment. Pursuant to article 175 of the Criminal Execution Code, CEC, a death sentence that has become executory can only be carried out after the receipt of official confirmation that all supervisory appeals have been rejected and that the individual was not granted a pardon. Death sentences are carried out by firing squad in private. The execution of several individuals is carried out separately, in the absence of the other convicted. All executions are carried out in the presence of a prosecutor, a representative of the penitentiary institution where the execution takes place, and a

medical doctor. On an exceptional basis, a prosecutor may authorize the presence of additional persons.

Pursuant to article 175 (5), of the CEC, the penitentiary administration of the institution where the execution took place is obliged to inform the court that has pronounced the sentence that the execution was carried out. The court then informs the relatives of the executed individual. The body of the executed is not given to the family, and no information about the burial place is provided. The State party concluded that the death penalty in Belarus is provided by law and constitutes a lawful punishment applied to individuals that have committed specific particularly serious crimes. The refusal to inform the relatives of a sentence to death or the date of execution and burial place is also provided by law (the CEC).

In light of the above, the State party affirmed that in the present cases, the moral anguish and stress caused to the authors cannot be seen as the consequence of acts, that had the objective to threaten or punish the families of the convicted, but rather as anguish that occurs as a result of the application of the State party's official organs of a lawful sanction and are not separable from this sanction, as provided in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In connection with the authorities' refusal to deliver the body of those executed for burial, and the refusal to divulge the burial place, the State party added that these measures are provided by law not with the aim of punishing the relatives of those executed, leaving them in a state of uncertainty and moral anguish, but because, as has been shown by the practice of other States that apply the death penalty, burial places of criminals sentenced to death constitute "pilgrimage" sites for individuals of mental instability. The State party added that neither the author nor her counsel had ever mentioned that the lack of information about the date of execution or the burial site location had caused any psychological harm to the author; they did not appeal to the State party's competent authorities in this relation.

Finally, the State party informed the Committee that its Parliament has asked the Constitutional Court to examine the question of the compliance of the relevant Criminal Code provisions regulating the application of the death penalty, with the provisions of the Constitution and the State party's international obligations.

	On 26 June 2007, the State party provided another submission to the Committee, in which it outlined its legislative framework and practice with respect to the death penalty (as provided in November 2006 above). It submits that a new law, which came into force on 17 July 2006, amended the Criminal Procedure and Administrative Infractions' Codes. In accordance with this law the death penalty should only be applied "until its abolition". Indicating that the death penalty may be abolished at some point in the future. In light of the information provided, in particular with respect to the new law, the State party requests the Committee to remove these cases from consideration under the follow-up procedure.
Further action taken or required	In its last annual report (A/62/40), the Committee considered the State party's response of 1 November 2006, regretted its refusal to accept the Committee's Views and considered the dialogue ongoing. In an effort to assist the State party and given the information provided in the last paragraph of this submission above, the Committee instructed the Secretariat to inform it that the Committee and/the Office of the United Nations High Commissioner for Human Rights would be ready to assist it in the examination of its obligations under international law with respect to the imposition of the death penalty. It also requested of the State party further information on the issues to be examined by the Constitutional Court and the likely time frame for consideration. The Committee understands that the law of 17 July 2007, as referred to above, was based on a decision of the Constitutional Court of 2004, which upheld the constitutionality of the application of the death penalty "until its abolition." It understands that there has been no decision relating to the death penalty by the Constitutional Court since 2004.
Committee's Decision	While welcoming the information that the abolition of the death penalty is envisaged for some future date, the Committee notes that the cases under consideration related to a finding of a violation of article 7 with respect to the authorities' initial failure to notify the authors of the scheduled date for the execution of their sons, and their subsequent persistent failure to notify them of the location of their sons' graves. The Committee notes that it has received two responses from the State party with respect to this issue and that the Special Rapporteur has met with the State party's representative on several occasions with regard to these cases as well as other cases involving the State party.Given the State party's persistent failure to explain how its law relating to the notification of the date of execution and burial ground (CEC)

and its implementation are consistent with the rights protected under the Covenant, and its failure to provide any remedy for the authors in these cases, the Committee considers that it serves no useful purpose to pursue the dialogue in these two cases and does not intend to consider these cases any further under the follow-up procedure.

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CCPR, A/64/40, vol. I (2009)

VI. FOLLOW UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

230. In July 1990, the Committee established a procedure for the monitoring of follow-up to its Views under article 5, paragraph 4, of the Optional Protocol, and created the mandate of the Special Rapporteur for follow-up on Views to this effect. Ms. Ruth Wedgwood has been the Special Rapporteur since July 2009 (ninety-sixth session).

231. In 1991, the Special Rapporteur began to request follow-up information from States parties. Such information had been systematically requested in respect of all Views with a finding of a violation of Covenant rights; 543 Views out of the 681 Views adopted since 1979 concluded that there had been a violation of the Covenant.

232. All attempts to categorize follow-up replies by States parties are inherently imprecise and subjective: it accordingly is not possible to provide a neat statistical breakdown of follow-up replies. Many follow-up replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer the complainant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee's Views at all or relate only to certain aspects of them. Some replies simply note that the victim has filed a claim for compensation outside statutory deadlines and that no compensation can therefore be paid. Still other replies indicate that there is no legal obligation on the State party to provide a remedy, but that a remedy will be afforded to the complainant on an ex gratia basis.

233. The remaining follow-up replies challenge the Committee's Views and findings on factual or legal grounds, constitute much belated submissions on the merits of the complaint, promise an investigation of the matter considered by the Committee or indicate that the State party will not, for one reason or another, give effect to the Committee's recommendations.

234. In many cases, the Secretariat has also received information from complainants to the effect that the Committee's Views have not been implemented. Conversely, in rare instances, the petitioner has informed the Committee that the State party had in fact given effect to the Committee's recommendations, even though the State party had not itself provided that information.

235. The present annual report adopts the same format for the presentation of follow-up information as the last annual report. The table below displays a complete picture of follow-up replies from States parties received up to the ninety-sixth session (13-31 July 2009), in relation to Views in which the Committee found violations of the Covenant. Wherever possible, it indicates whether follow-up replies are or have been considered as satisfactory or unsatisfactory, in terms of their compliance with the Committee's Views, or whether the dialogue between the State party and the Special Rapporteur for follow-up on Views continues. The notes following a number of case entries convey an idea of the difficulties in categorizing follow-up replies.

236. Follow-up information provided by States parties and by petitioners or their representatives subsequent to the last annual report (A/63/40) is set out in annex IX to volume II of the present annual report.

...						
Belarus (17)	780/1997, *Laptsevich* A/55/40				X A/56/40, A/57/40	X
	814/1998, *Pastukhov* A/58/40				X A/59/40	X
	886/1999, *Bondarenko* A/58/40	X A/59/40, A/62/40 and A/63/40				
Belarus (*cont'd*)	887/1999, *Lyashkevich* A/58/40	X A/59/40, A/62/40 and A/63/40				
	921/2000, *Dergachev* A/57/40				X	X
	927/2000, *Svetik* A/59/40	X A/60/40, A/61/40 and A/62/40				X A/62/40
	1009/2001,				X	

	*Shchetko*A/61/40					
	1022/2001, *Velichkin* A/61/40				X A/61/40	X
	1039/2001, *Boris et al.* A/62/40	X A/62/40				X
	1047/2002, *Sinitsin, Leonid* A/62/40				X	
	1100/2002, *Bandazhewsky* A/61/40	X A/62/40				X
	1178/2003, *Smanster* A/64/40				X	
	1207/2003, *Malakhovsky* A/60/40	X A/61/40		X		X
	1274/2004, *Korneenko* A/62/40	X A/62/40				X A/62/40
	1296/2004, *Belyatsky*A/62/40	XA/63/40				X

Belarus (*cont'd*)	1311/2004, *Osiyuk* A/64/40	Not yet due				X
	1553/2007, *Korneenko*, Milinkevich A/64/40				X	
...						

CCPR, CCPR/C/SR.2712 (2010)

Human Rights Committee
Ninety-eighth session

Summary record (partial) of the 2712th meeting
Held at Headquarters, New York,
on Thursday 25 March 2010, at 3pm

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Follow-up on views under the Optional Protocol

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2. **Ms. Wedgwood**, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, introduced the follow-up progress report, which included information received since the Committee's 97th session.

3. Referring to case No. 1297/2004 (***Medjnoune v. Algeria***), she recommended that the Committee should persuade the State party, itself an outspoken member of the Human Rights Council, to give an indication of when the author would be tried. In cases No. 1178/2003 and 1553/2007 involving Belarus, which disputed the Committee's findings and therefore refused to implement its Views, a meeting with State party representatives would be productive. With respect to case No. 1353/2005 (***Afuson v. Cameroon***), the State party had claimed that it had attempted to provide a remedy but had been unable to reach the author. The Committee might therefore consider supplying the State party with the author's e-mail address, as long as doing so did not endanger the author. Turning to case No. 1134/2002 (***Gorji-Dinka v. Cameroon***), she noted that the State party, after failing to respond to the Committee's three requests for information while preparing its Views, now wished to submit information. She recommended that the Committee should enquire as to what information country representatives wished to contribute, while also reminding them of States parties' obligations under the Optional Protocol.

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17. *The recommendations contained in the follow-up progress report of the Committee on individual communications were approved*.

The discussion covered in the summary record ended at 3.40 p.m.

A/65/40 vol. I (2010)

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Chapter VI. Follow-up on individual communications under the Optional Protocol

202. The present chapter sets out all information provided by States parties and authors or their counsel since the last annual report (A/64/40).

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State party	**Belarus**
Case	***Smantser, 1178/2003***
Views adopted on	23 October 2008
Issues and violations found	Detention in custody - article 9, paragraph 3.
Remedy recommended	An effective remedy, including compensation
Due date for State party response	12 November 2009
Date of State party response	31 August 2009
State party response	The State party contests the Views and submits inter alia that the Courts acted with respect to the Belarus Constitution, and Criminal Procedural Code, as well as the Covenant. It denies that the author's rights under the Covenant were violated.
Author's comments	None
Committee's Decision	The Committee considers the dialogue ongoing.
Case	***Korneenko and Milinkevich, 1553/2007***
Views adopted on	20 March 2009
Issues and violations found	Freedom of expression, freedom of communication of information and ideas about public and political issues, the

	freedom to publish political material, to campaign for election and to advertise political ideas - article 19, paragraph 2, and article 25 read together with article 26 of the Covenant.
Remedy recommended	An effective remedy, including compensation amounting to a sum not less than the present value of the fine and any legal costs paid by the author.
Due date for State party response	12 November 2009
Date of State party response	31 August 2009
Date of author's comments	Awaiting comments
State party response	The State party reiterates information and arguments previously provided prior to consideration of this case by the Committee and disputes the Committee's findings. In its view, the authors' trial was fair and the State party considers that the national courts acted with respect to the existing procedures.
Author's comments	None
Committee's Decision	The Committee considers the dialogue ongoing

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