

UKRAINE

Follow-up - Jurisprudence Action by Treaty Bodies

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

CHAPTER VI. Follow-up activities under the Optional Protocol

...

223. The previous annual report of the Committee¹ 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.*

...

Ukraine: Views in one case with findings of violations:

726/1996 - *Zheludkov* (annex VI); for follow-up reply see paragraph 255 below.

...

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

224. 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 that 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.

...

255. **Ukraine:** case No. 726/1996 - *Zheludkov* (annex VI): the State party informed the Committee, by note verbale of 29 January 2003, that following an exhaustive examination by the Attorney-General's Office, the author's conviction was considered lawful and well-founded, with no proof of torture during investigation having been found. The State party did acknowledge violations of the applicable procedure during the preliminary investigation; however, according

to the State party, those violations did not affect the lawfulness of the judgement. The State party further considered unfounded the Committee's Views in relation to article 9, paragraph 3. It referred to jurisprudence of the European Court, in which the Court declared that the Regional Attorney is an officer authorized by law to exercise judicial power; the principal criterion considered by the European Court was the independence of the attorney in relation to the executive power. According to the State party, under article 157 of the Ukrainian Criminal Procedure Code, the attorney is independent from all other State powers. Accordingly, the State party noted that it would not implement the Committee's Views. A full copy of the State party's submission is on file with the secretariat.

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.

...

Ukraine:

Zheludkov v. Ukraine, Case no. 726/1996, Views adopted on 5 November 2002

Violations found: Article 9, paragraph 3, and article 10, paragraph 1

Issues of Case: Denial of access to medical records; failure to be brought promptly before a judicial officer

Remedy recommended: Compensation, and to take effective measures to ensure that similar violations do not recur in the future, especially by taking immediate steps to ensure that the decisions concerning the extension of custody are taken by an authority, having the institutional objectivity and impartiality necessary to be considered an "officer authorized to exercise judicial power" within the meaning of article 9, paragraph 3 of the Covenant.

Deadline for State party follow-up information: 30 February 2002

Follow-up information received from State party: By note verbale of 29 January 2003, the State party informed the Committee that, following an exhaustive investigation by the Attorney General's office, the author's conviction was considered lawful and well-founded. Torture of the author during the investigation was not demonstrated. It acknowledged violations of procedural rules at the time of the preliminary investigation. It accepted that when the author was informed about expert testimony, his counsel was not present. However, these violations do not affect the lawfulness of the judgment. It referred to the European Court's jurisprudence in *Shisser v. Switzerland* case, in which the Court declared that the Regional Attorney is an officer authorized by law to exercise judicial power and that the Swiss Attorney executes investigation functions and also accusation functions. The State party adds that the author was released on parole on 29 December 1998, i.e. 1 month and 25 days before the expiry of his sentence. He did not complain

about bad prison conditions, or his state of health. It could not be determined whether the author's mother or his counsel requested medical consultations, or access to his medical file, nor who requested to forward him medication. Following a request from the local Helsinki Committee, several medical examinations were administered to the author in the Regional Hospital, on 31 October 1994.

Follow-up information received from author: None

Special Rapporteur's Recommendations: No further action under the follow-up procedure required.

...

CHAPTER VI. FOLLOW-UP ACTIVITIES UNDER THE OPTIONAL PROTOCOL

...

230. The previous annual report of the Committee¹ 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.*

...

Ukraine: Views in two cases with findings of violations:

726/1996 - *Zheludkov* (A/58/40); for follow-up reply see A/58/40, paragraph 255. In the follow-up report (CCPR/C/80/FU1), adopted by the Committee during its eightieth session, the Special Rapporteur recommended that no further action be taken under the follow-up procedure with respect to this case;

781/1997 - *Aliiev* (A/58/40); follow-up not yet received.

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, CCPR/C/SR.2280 (2005)

Human Rights Committee
Eighty-third session

Summary record of the 2280th meeting
Held at Headquarters, New York, on
Friday, 1 April 2005, at 10 a.m.

...

Follow-up on views under the Optional Protocol

...

2. **Mr. Ando**, speaking as Special Rapporteur for follow-up on Views under the Optional Protocol, presented the Follow-up Progress Report (CCPR/C/83/FU1 and FU2), which updated the Committee's previous annual report (CCPR/C/81/CRP.1/Add.6) on follow-up activities and included information received between the eighty-first and eighty-third sessions. It dealt with 20 different States parties and covered 18 cases...

...

4. ... In case No. 781/1997 (*Aliiev v. Ukraine*), following the commuting of the author's death sentence to life imprisonment, the Committee had requested the State party to consider paying compensation to the author and releasing him early, if its finding of a violation was established, and to reconsider its decision not to fully implement the Committee's recommendation.

...

...

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
...						
Ukraine (2)	726/1996, <i>Zheludkov</i> A/58/40	X A/58/40	X A/59/40			
	781/1997, <i>Aliev</i> A/58/40	X A/60/40 (annex VII)		X A/60/40		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	UKRAINE
Case	A. Aliev, 781/1997
Views adopted on	37839
Issues and violations found	Unfair trial, no right to legal representation - articles 14, paragraphs 1 and 3 (d).
Remedy recommended	Since the author was not duly represented by a lawyer during the first months of his arrest and during part of his trial, even though he risked being sentenced to death, consideration should be given to his early release.
Due date for State party response	37955
Date of State party response	38215
State party response	According to the State party, the author's case was examined by the General Prosecutor, who established that Aliev was properly convicted as charged on 11 April 1997 and sentenced to death. On 17 July 1997, the Supreme Court confirmed the conviction and sentence.

The author's claim that he was denied access to counsel for a five month period during the investigation are concocted. He was arrested on 28 August 1996 and was interrogated in the presence of his lawyer. The criminal investigation into the author's case was

conducted with the participation of his lawyer, who was involved at all relevant stages, including during the trial. After the conviction Aliev and his lawyer appealed to the Supreme Court. It claims that the author was advised of the Supreme Court hearing but for unknown reasons he failed to appear.

The case file materials refute the claims by Aliev that he was subjected to “unlawful means of investigation”, or that any violations of criminal procedure law took place. There is no evidence to suggest otherwise, and Aliev made no such complaints at the time. It was only at his appeal that Aliev started to make claims about having been forced by the police to make a confession. In accordance with the amnesty on the death penalty in force, Aliev’s sentence was commuted to life imprisonment. In the circumstances, the State party claims that there is no basis to alter the findings of the relevant judicial bodies.

...

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	Unsatisfactory response	No follow-up response received	Follow-up dialogue ongoing
...						
Ukraine (2)	726/1996, <i>Zheludkov</i> A/58/40	X A/58/40	X A/59/40			
	781/1997, <i>Aliev</i> A/58/40	X A/60/40		X A/60/40		X
...						

...

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
...						
Ukraine (2)	726/1996, <i>Zheludkov</i> A/58/40	X A/58/40	X A/59/40			
	781/1997, <i>Aliev</i> A/58/40	X A/60/40		X A/60/40		X
...						

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.

...						
Ukraine (2)	726/1996, <i>Zheludkov</i> A/58/40	X A/58/40	X A/59/40			
	781/1997, <i>Aliev</i> A/58/40	X A/60/40		X A/60/40		X
...						

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.

...						
Ukraine (2)	726/1996, <i>Zheludkov</i> A/58/40	X A/58/40	X A/59/40			
Ukraine (<i>cont'd</i>)	781/1997, <i>Aliev</i> A/58/40	X A/60/40		X A/60/40		X
...						

CCPR, CCPR/C/SR.2738/Add.1 (2010)

Human Rights Committee
Ninety-ninth session

Summary record of the second part (public) of the 2738th meeting
Held at Palais Wilson, Geneva,
on Wednesday 28 July 2010, at 11:25 am

...

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

...

Follow-up progress report on individual communications (CCPR/C/99/R.3)

74. **Mr. Iwasawa** introduced the progress report on individual communications on behalf of Ms. Wedgwood, Special Rapporteur for Follow-up on Views, who was absent.

...

95. **Mr. Iwasawa** introduced case No. 781/1997 concerning Ukraine. The issues raised were an unfair trial and denial of the right to legal representation. In its response to the Committee's Views submitted in August 2004, the State party had claimed that there was no basis for any amendment of the findings of the relevant judicial bodies. In his comments submitted in April 2010, the author confirmed that the State party had taken no action on the Committee's Views and that he remained in prison. As the Committee might wish to request the Special Rapporteur to arrange a meeting with the State party, the proposed decision was to consider that the dialogue was ongoing.

96. **Mr. O'Flaherty**, supported by **Mr. Bhagwati** and **Mr. Iwasawa**, said that he found the remedy recommended by the Committee to be very weak, namely that "consideration should be given" to the author's early release. It was easy for the State party to claim that it had considered and rejected his early release. The Committee had little choice but to conclude that the State party's response to the Committee's Views must be accepted.

97. **Mr. Salvioli** said that there had clearly been a violation of article 14 of the Covenant which had led to a conviction and life imprisonment. Although he shared Mr. O'Flaherty's view that the recommendation was feeble, he was in favour of arranging a meeting with the State party and maintaining a dialogue on behalf of the victim and in keeping with the Covenant.

98. **Mr. O'Flaherty** said that he was not opposed to Mr. Salvioli's proposal. However, he wondered what action the State party would have to take in order to satisfy the Committee.

99. **Mr. Rivas Posada** said that the Committee must in future do its utmost to avoid recommending to a State party that it should consider taking particular measures.

100. The Chairperson suggested that the Special Rapporteur should be asked to proceed with the dialogue.

101. *It was so decided.*

102. *The follow-up progress report on individual communications as a whole, as amended, was approved.*

The meeting rose at 1 p.m.

...

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).

...

State party	Ukraine
Case	<i>Aliev, 781/1997</i>
Views adopted on	7 August 2003
Issues and violations found	Unfair trial, no right to legal representation - articles 14, paragraphs 1 and 3 (d).
Remedy recommended	Since the author was not duly represented by a lawyer during the first months of his arrest and during part of his trial, even though he risked being sentenced to death, consideration should be given to his early release.
Due date for State party response	1 December 2003
Date of State party response	17 August 2004
State party response	The Committee will recall the State party's submission in which it stated that the author's case was examined by the General Prosecutor, who established that Mr. Aliev was properly convicted as charged on 11 April 1997 and sentenced to death. On 17 July 1997, the Supreme Court confirmed the conviction and sentence. The author's claim that he was denied access to counsel for a five-month period during the investigation was concocted. He was arrested on 28 August 1996 and was interrogated in the presence of his lawyer. The criminal investigation into the author's case was conducted with the participation of his lawyer, who was involved at all relevant stages, including during the trial. After the conviction, Mr. Aliev and his lawyer appealed to the Supreme Court. The State party

claimed that the author was advised of the Supreme Court hearing but for unknown reasons he failed to appear. The case file materials refute the claims by Mr. Aliev that he was subjected to “unlawful means of investigation”, or that any violations of criminal procedure law took place. There is no evidence to suggest otherwise, and Mr. Aliev made no such complaints at the time. It was only at his appeal that Mr. Aliev started to make claims about having been forced by the police to make a confession. In accordance with the amnesty on the death penalty in force, Mr. Aliev’s sentence was commuted to life imprisonment. In the circumstances, the State party claims that there is no basis to alter the findings of the relevant judicial bodies.

Author’s comments

On 10 April 2010, the author responded to the State party’s submission. He reiterated information previously provided prior to consideration of his case by the Committee, including a detailed account of the facts of his case, and of the inconsistencies in the State party’s account of those facts. As to follow-up, he confirms that the State party has done nothing to implement the Views and that he remains in prison.

Committee’s Decision

The Committee considers the dialogue ongoing

...