

## Ukrainian Helsinki Human Rights Union

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Only in English

### Written submission of the Ukrainian Helsinki Human Rights Union for the OSCE Human Dimension Implementation Meeting

*Working session 11: Humanitarian issues and other commitments, Refugees and displaced persons*

#### *Ukraine's Prosecutor General extradites recognized refugee to Russia*

##### *Kuznetsov case*

On 28 July 2008 the Prosecutor General took the decision to hand Oleg Kuznetsov, a Russian national granted refugee status in Ukraine, to the Russian authorities. During the night of 28-29 July 2008 a Russian national Oleg Kuznetsov was, in enforcement of a decision by the Prosecutor General Oleksandr Medvedko extradited to Russia. Mr Kuznetsov had been granted refugee status in Ukraine, yet was handed over to the country which he fled from due to well-founded fear that he could be subjected to torture and ill-treatment, as well as other human rights violations. Oleg Kuznetsov had been detained by Ukrainian law enforcement officers in Kyiv a year ago, on 19 July 2007. The following day, the Shevchenkivsky District Court in Kyiv remanded him in custody. Soon afterwards, Kuznetsov applied for refugee status but remanded in custody from that time on.

On 5 March 2008 the State Committee on Nationalities and Religions granted Kuznetsov refugee status, finding his fears of flagrant violations of his basic rights in the Russian Federation to be well-founded. On 21 April he received his refugee identification card. Despite this, Oleg Kuznetsov remained in custody pending extradition, although in accordance with Article 3 of Ukraine's Law "On refugees", such extradition was impossible.

The Prosecutor General's Office considered remand in custody of a refugee to be lawful arguing that it had first protested against the decision of the State Committee, and after this protest was rejected, had lodged an appeal against the decision with the court. All efforts by Kuznetsov's lawyers to have him released by a court order were in vain. However, on 21 July the Prosecutor's Office lost the case with the court upholding the lawfulness and valid grounds for granting Kuznetsov refugee status.<sup>1</sup>

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<sup>1</sup> More details on this case available at: The Prosecutor General has overstepped domestic and international law. What next? - Open Appeal from the Ukrainian Helsinki Human Rights Union // <http://www.helsinki.org.ua/en/index.php?id=1217414538>; Position of the Ukrainian Helsinki Human Rights Union regarding the extradition of a refugee by Ukraine's Prosecutor General // <http://www.helsinki.org.ua/en/index.php?id=1217838754>: The Prosecutor General must go! // <http://www.helsinki.org.ua/en/index.php?id=1217584204>.

A reply has been received from the President's Secretariat to the Ukrainian Helsinki Human Rights Union's letter regarding the extradition to the Russian Federation on 28 July of Oleg Kuznetsov, who had been granted refugee status in Ukraine in March this year.

Even if the letter never reached the President, it is disturbing that he should have a Head of his Secretariat (and it is Viktor Baloha's name at the bottom of this letter) who can state that "According to information from the Prosecutor General's Office, the extradition of O. Kuznetsov was carried out on lawful grounds". The problem is not even the fact that given the material presented by UHHRU, he should still think it sufficient to say that the Prosecutor General says that all is well. It is that the details of this case are in fact secondary. The situation is unequivocally clear: Kuznetsov had been granted refugee status, and it is against domestic and international law to extradite a recognized refugee.

### ***Case of 11 ethnic Tamil asylum-seekers***

Most recently 11 ethnic Tamil asylum-seekers from Sri Lanka were forcibly returned to Sri Lanka on 4 and 5 March 2008. It is feared that their return to Sri Lanka will expose them to the risk of serious human rights violations including torture and ill treatment.

Amnesty International has strongly condemned Ukraine's actions, which are a violation of international human rights and refugee law. The organization is also concerned that the asylum-seekers were not offered access to fair and efficient asylum procedures while in Ukraine.

All 11 asylum-seekers were registered with the United Nations High Commissioner for Refugees (UNHCR) in Kyiv between August 2007 and January 2008, and six of them had applied to the Ukrainian authorities for refugee status.

They were detained by the State Security Services (SBU) at the end of January and, according to the UNHCR, they were not offered interpretation or independent legal advice.

On 27 February the six applications were rejected by the Khmelnytskyi migration services for procedural reasons. They were given no right to appeal.<sup>2</sup>

### ***Case of 10 asylum-seekers from Uzbekistan***

During the night of 14-15 February 2006, 10 asylum-seekers from Uzbekistan, who had been seeking international protection in Ukraine, were forcibly returned to Uzbekistan by the Ukrainian authorities. They were returned without the right to appeal or, in one case, the right to apply for asylum. Amnesty International has received reports that some of the deported asylum-seekers were subjected to torture and ill-treatment upon return to Uzbekistan.

### ***Extradition and deportation***

The legislation in the field of extradition and deportation remains underdeveloped. It does not provide for examination of any circumstances, which the state should take into account according to Article 3 of the Convention against Torture.

Decisions regarding extradition are within the exclusive jurisdiction of the Prosecutor General of Ukraine who resolves such issues without any procedure. Such a decision is taken secret. The law does not even stipulate the duty to inform the individual whose extradition is demanded by another

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<sup>2</sup> More information in English available at: Ukraine forcibly returns 11 Tamil asylum-seekers // <http://www.helsinki.org.ua/en/index.php?id=1204924967>; Painful lessons // <http://www.helsinki.org.ua/en/index.php?id=1205317783>.

state of the decision taken and the grounds for the decision. However, taking into account that there is no clear procedure to appeal decisions on extradition on the national level, as well as that proving the circumstances evidencing the risk of torture requires serious professional training, for a person, whose extradition is requested, aid of a qualified lawyer is essential. However, these persons, as a rule, are taken into custody and their communication with the outside world is interrupted. As, by definition, these persons are foreigners, their opportunities for receiving qualified aid are very limited. Law does not provide for obligatory presenting a lawyer in such cases.