

Ukrainian Helsinki Human Rights Union

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Ukraine

Written submission

Passing information contained in refugees' files to the country of their origin: case of refugee from Kazakhstan in Ukraine?

Documents received recently by the Ukrainian Helsinki Human Rights Union indicate that in July 2008 Ukraine violated one of the fundamental principles regarding the protection of refugees' rights, the principle of confidentiality, by passing information contained in refugees' files to the country of their origin.

On 28 March 2006 Kazakhstan nationals Z. Baisakov, Y. Baisakov, S. Gorbenko and A. Zhekebaev were granted refugee status in Ukraine. In 2007 the Kyiv Prosecutor's Office carried out a check and found that the decision to grant them refugee status had been lawful.

On 8 April 2008 the Kazakhstan Prosecutor General sent Ukraine's Prosecutor General's Office a request for legal assistance under the 1993 Minsk Convention in which it asked for original letters of opposition political leaders of Kazakhstan attached to the person files of those four refugees.

On 15 July 2008 an SBU [Security Service] investigator removed from the State Committee on Nationalities and Religion originals of letters containing an assessment of the situation in Kazakhstan and a conclusion regarding the political motives for the persecution of the asylum seekers.

In addition, at the request of the Kazakhstan Prosecutor General, several representatives of the State Committee were questioned regarding issues connected with the granting of refugee status to the above-mentioned Kazakhstan nationals.

At the end of July 2008 these originals of documents on the cases of refugees and the interrogation protocols of representatives of the State Committee were handed over to the Kazakhstan Prosecutor General's Office.

At the present time these documents are evidence in a criminal case against Bolat Abilov, Leader of the "Azat" Party, Asilbek Kozhakmetov, Leader of the opposition movement "Shanirak" and Tolen Tokhtasinov, Head of the Kazakhstan Communist Party involving charges "of concealing

a crime” this being reflected in providing information to Ukraine’s State Committee on Nationalities and Religion.

The Ukrainian Helsinki Human Rights Union has documented proof that the information was handed over to Kazakhstan by Ukrainian State authorities.

Providing confidential information on cases of refugees is in flagrant breach of Article 11 of the Law “On refugees” which states that “information given by the application is confidential”.

The principle of confidentiality is a foundation of protection of refugees’ rights and its violation can lead to a breakdown of the entire system of protection of refugees. In its Opinion № 91(LII) – 2001 the Executive Committee of the UNHCR states that “The registration process should abide by the fundamental principles of confidentiality”. It also stresses “the confidential nature of personal data and the need to continue to protect confidentiality»,

The passing of confidential information to the country of origin can lead to many undesirable consequences. The violation of this principle deprives refugees and asylum seekers of the possibility of freely and without fear justifying their applications for refugee status. It also prevents the competent bodies from receiving and assessing information from sources which are not under the control of the authorities in the country of origin of the people involved, since it puts any person (relatives, friends, or other observers) in that country in danger of persecution. Furthermore, as a result of the passing of information to the country of origin, the asylum seekers themselves can, from that moment, have grounds for well-founded fears of being returned to their county of origin.

The manner in which the Ukrainian authorities behaved during the handing over of confidential information from personal files of refugees to their country of origin gives grounds for believing that this is usual practice.

The Ukrainian Helsinki Human Rights Union would note that this is not the first case where Ukraine’s authorities have violated fundamental refugee rights. The extradition of asylum seekers to Uzbekistan in 2006, the deportation of Tamil asylum seekers to Sri Lanka, the extradition of recognized refugee Oleg Kuznetsov to the Russian Federation have seriously impinged on Ukraine’s standing in the international community.

The Ukrainian Helsinki Human Rights Union demands from the Ukrainian government:

- 1) that the Prosecutor General’s Office, the Security Service of Ukraine and the State Committee on Nationalities and Religion adhere to legislation and international standards regarding the protection of refugees’ rights and that they do not pass confidential information about refugees on to their country of origin;
- 2) that the Prosecutor General’s Office carry out an urgent investigation into the passing of confidential information from the personal files of refugees to their country of origin or to other country and bring those responsible to answer, both in this case and in any other cases.

Recommendations to OSCE Human Dimension Implementation Meeting:

- 1) Develop clear recommendations to the states to keep in secret and do not disclose the refugee files including statements of the witnesses and other evidence of the persecution of the refugee in the state of their origin.
- 2) Develop an absolute prohibition for state to pass refugees files to the state of their origin.