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Cable title: **UKRAINE: MFA DEFENDS DEPORTATION OF UZBEKS, LABELS**

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S E C R E T SECTION 01 OF 04 KIEV 000743

SIPDIS

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SUBJECT: UKRAINE: MFA DEFENDS DEPORTATION OF UZBEKS, LABELS THEM "ISLAMIC MILITANTS"

REF: A. HULTMAN-GWALTNEY 2/16 EMAIL

B. KIEV 659

Classified By: Deputy Chief of Mission Sheila Gwaltney for reasons 1.4 (b) and (d).

Summary

1. (S) In a written response to our February 17 non-paper about Ukraine's refoulement of a group of Uzbek asylum seekers (refs A and B), MFA asserted that the Uzbeks had been deported in accordance with domestic and international law, dismissed the Uzbeks' asylum claims as "manifestly unfounded," and characterized them as "Islamic radicals." Separately, UNHCR's Kiev-based Deputy Regional Representative Isabelle Mihoubi told us that in a "very tense" meeting February 21, MFA Consular Department head Borys Bazylevsky had defended the refoulements and had asserted that the 10 deported Uzbeks were involved in "terrorist activities" in Crimea. Mihoubi said she and Regional Representative Simone Wolken poked big holes in the MFA case and pressed Bazylevsky on the whereabouts of the 11th Uzbek who was detained in Simferopol but who did not show up in Tashkent. Bazylevsky claimed that the man had been released "to relatives" in Ukraine, an assertion contradicted by the Uzbek community in Kiev. Mihoubi said Bazylevsky privately confided that he had been ordered to deliver the "party line" to UNHCR and added that Foreign Minister Tarasyuk had called in the Uzbek Charge to ask that the deported men be treated humanely. Mihoubi said that in an extraordinary follow-on meeting at the State Committee for Nationalities and Migration (SCNM), Deputy Chairman Serhiy Chekhovych had ridiculed the MFA position as "nonsense" and asserted that the SCNM was going to take legal action against the Security Service of Ukraine (SBU) for violating the European Convention on Human Rights. On February 23, Bazylevsky told DCM that the 10 Uzbeks were

members of Akromiya, a Hizb ut-Tahrir splinter group; the 10 were Islamic militants involved in illegal activities.



Bazylevsky acknowledged, though, that the incident could have been handled better, adding that it had been a "learning experience" for the Ukrainian government. End summary.

MFA: We're Good

2. (SBU) As promised by Foreign Minister Tarasyuk, MFA responded in writing to Ambassador's February 17 demarche regarding Ukraine's February 14 refoulement of a group of Uzbek asylum seekers (refs A and B). According to an MFA non-paper faxed to the Embassy February 22, the Uzbeks were deported in accordance with Ukrainian and international law; they were not refouled. The non-paper noted, among other things, that the Uzbeks had arrived in 2005 via Russia and Moldova, had "manifestly unfounded" asylum claims, were involved in spreading Islamic extremism, and waived -- in writing -- their right to appeal their deportation to Uzbekistan. The document also "emphasized" that Uzbekistan was a "State Party to the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment." (Note: See para 11 for the full text of the non-paper.)

UNHCR: Nonsense

3. (C) UNHCR's Kiev-based Deputy Regional Representative Isabelle Mihoubi told us February 22 that she and Regional Representative Simone Wolken had been called to the MFA on the evening of February 21 to discuss the incident with the head of the MFA Consular Department, Borys Bazylevsky. During what Mihoubi described as a "very tense" meeting, Bazylevsky handed over a non-paper similar to the one we received and asserted that the 10 Uzbeks were "Islamic militants" involved in "terrorist activities" in Crimea. In rebuttal, Mihoubi and Wolken:

-- Pointed out that there is no provision in Ukrainian law for an asylum seeker to "waive" the right to an appeal;

-- Asked to see GOU files on the Uzbeks to verify the claim that the asylum applications were "manifestly unfounded," a request that was immediately shot down by Bazylevsky;

-- Noted that, despite Bazylevsky's charges that the Uzbeks were involved in terrorism, the Uzbeks had not been convicted of anything in any Ukrainian criminal court; and,

-- Stressed that Ukraine should have at least deported the Uzbeks back to Moldova and Russia, where they had come from, as opposed to sending them straight to Tashkent and almost certain mistreatment at the hands of the Uzbek security forces.

The Missing Man

4. (C) Mihoubi said that she and Wolken pressed Bazylevsky for details on the 11th Uzbek detained in Simferopol. They noted that UNHCR had only confirmed that 10 Uzbeks made it to Tashkent, where they were being held in "isolated confinement." The Uzbek community in Kiev, they told Bazylevsky, had alleged that the missing man might have been beaten to death by Uzbek security forces at the detention facility in Simferopol. According to Mihoubi, the "visibly uncomfortable" Bazylevsky claimed that the man had been released to relatives living in Crimea. Mihoubi and Wolken pressed him to explain why an alleged Islamic militant reportedly involved in terrorism would simply be released from detention and allowed to "walk the streets with his relatives"; Bazylevsky had no response. (Note: A prominent Uzbek community leader here told RFE/RL's Kiev Bureau

February 21 that the missing man had no relatives in Ukraine.)

5. (C) After the meeting concluded, Mihoubi related that the distressed Bazylevsky told her and Wolken privately (with no MFA staff present) that he had been ordered to deliver the "party line" to UNHCR. Foreign Minister Tarasyuk's game plan for handling the growing public relations crisis revolved around insisting that no laws had been broken and depicting the deportation as a routine consular matter. He added that Tarasyuk had called in the Uzbek Charge d'Affaires and asked for "assurances" from Tashkent that the deported Uzbeks would be treated humanely.

SCNM Taking Legal Action Against SBU?

6. (C) The UNHCR representatives' meeting at the MFA was followed by an extraordinarily candid session at the State Committee on Nationalities and Migration (SCNM), Mihoubi related. She said that she and Wolken met with SCNM Deputy Chairman Serhiy Chekhovych, as Chairman Serhiy Rudyk was traveling (ref B). Chekhovych pointedly called the MFA non-paper "nonsense" and handed over government dossiers on the deported Uzbeks. Mihoubi asserted that just a cursory review of the files showed that the men, some of whom had witnessed the May 2005 massacre in Andijon and/or had family members severely punished for taking part in the uprising, had asylum claims that merited serious review; the claims were not "manifestly unfounded."

7. (C) Mihoubi said that Chekhovych told them that the SCNM had officially asked the Security Service of Ukraine (SBU), in writing, to provide an explanation of what had happened to the Uzbeks on February 14. Mihoubi said that next, to her shock, Chekhovych asserted that the SCNM was going to take legal action against the SBU by filing a complaint with the criminal chamber of the Supreme Court alleging that the SBU knowingly violated Article 3 of the European Convention on Human Rights (which prohibits refoulement). According to Mihoubi, Chekhovych added that President Yushchenko had asked the government to keep him up to date on the incident; the SBU, he asserted, had assured Yushchenko that "everything is perfect."

MFA: They Were Islamic Militants

8. (S) In a late afternoon meeting February 23, Bazylevsky told DCM that the 10 deported Uzbeks were members of Akromiya, the Hizb ut-Tahrir splinter group that was at the center of the Andijon events. This had been confirmed by the SBU independent of information from the Karimov government. The 10 were trying to set up an Akromiya branch in Crimea and were raising funds for the organization, which, according to Bazylevsky, explicitly embraced the use of violence against the Ukrainian government. Citing material from the SBU, he asserted that foreign Islamic militants were flocking to Crimea "like bees to honey," including alleged militants from Afghanistan, Malaysia, Saudi Arabia and Turkey. Bazylevsky underscored that the 10 had been deported from Ukraine in accordance with the law. They were dangerous, and the situation in Crimea was tense, he said, noting that he had been in Chicago on 9/11 (where he served as Ukrainian Consul General) and hoped that "America would understand" Ukraine's security concerns. He offered to put the Embassy directly in touch with the SBU to get more detailed information on the deported Uzbeks. In response to a question from DCM, Bazylevsky said that the 11th Uzbek detained in Simferopol was not dead or in the hospital. He had been released because he was innocent and was currently with relatives in

Ukraine, Bazylevsky claimed. (Note: The Ukrainians have not yet shared these details with UNHCR or the EU.)

Mea Culpa

9. (C) In response to questions from the DCM, Bazylevsky acknowledged that the authorities in Crimea had not handled the incident in a sophisticated manner; he groused that "the Crimeans think they're more clever than Kiev." The incident had highlighted the need for closer coordination within the Ukrainian government on cases like this, especially between Kiev and the regions. Lessons had been learned; for example, the incident had prompted a review of the political asylum process, which Bazylevsky described as "currently very hazy." Bazylevsky also defended Ukraine's treatment of Uzbek refugees in general, noting that in 2005 Ukraine granted refugee status to 24 of 28 Uzbek applicants. DCM impressed on Bazylevsky that, even if the GOU was concerned that the Uzbeks were terrorists, the GOU should have fulfilled its international obligations by involving UNHCR early in the process and initiating legal procedures against the asylum seekers.

Comment

10. (C) If the UNHCR and SCNM accounts are correct, the SBU worked with its Uzbek sister service to detain political opponents of the Karimov government and send them back to Tashkent against their will. We have heard a variety of speculative explanations as to "why": the gas crisis has made Ukraine loathe to offend Karimov (despite the fact that Ukraine only gets a small amount of gas from Uzbekistan); the mostly pro-Russia, pro-Yanukovych Crimean authorities did it to embarrass Yushchenko in the run-up to the March Rada elections; or, this was a case of business-as-usual cooperation among security services to the detriment of illegal immigrants. In the MFA variant, active terrorist elements have been removed from Crimea, where they intended to do harm to Ukraine. In any case, as the SCNM threat to sue its fellow GOU agency the SBU demonstrates, the Ukrainian government has difficulty in taking coordinated action in support of its stated principles and goals; it appears to have stumbled badly in this case. And the issue does not appear to be going away. Human rights activists and Rada MPs have pledged to form an independent commission to look into the matter; Crimean Tatar MP Refat Chubarov will be one of the commission members. Bazylevsky also mentioned that Ambassador Shamshur would be delivering a demarche on this incident on February 23 in Washington. The Embassy will also follow up with the SBU on the offer of more detailed information about the deported Uzbeks.

Text of MFA Non-Paper

11. (SBU) Begin unofficial Embassy translation:

Citizens of the Republic of Uzbekistan arrived in Ukraine in May-June 2005 from the Russian Federation and Moldova, which are recognized as safe countries.

In February, these individuals applied for refugee status at the Migration Service Directorate in the Autonomous Republic of Crimea. Upon due examination of their applications, the Directorate decided not to process documents for granting refugee status to the above individuals because their applications were manifestly unfounded and did not meet the requirements of Ukraine's Law on Refugees. Such an approach is also based on the 1983 UNHCR Executive Committee

Conclusion No. 30 "The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status."

In accordance with Ukrainian and international law, and the 1977 UNHCR Executive Committee Conclusion No. 8 "Determination of Refugee Status," the Uzbek citizens were accorded the right to appeal the decision in a court of law. According to the copies of their personal written statements, attached to the case, they declined to appeal.

During their stay in Ukraine, the above citizens spread the ideology of radical trends in Islam, which contradicts UN principles and the laws of Ukraine, lived in Ukraine in violation of the rules of their stay, and refused to leave Ukraine voluntarily. On February 14, 2006, in accordance with the relevant rulings of the Kiev District Court in Simferopol, the Uzbek citizens were expelled from Ukraine.

Therefore, the actions of the authorities toward the above individuals were in line with Ukrainian law, and do not constitute a violation of Ukraine's international treaty obligations.

In addition, it must be noted that the 1951 Convention relating to the Status of Refugees does not cover the above aliens because the Convention pertains to individuals who have been accorded the status of refugee.

It must be emphasized that it is not a question of extradition of the Uzbek citizens, but rather a question of a well-founded refusal to grant refugee status, and expulsion from Ukraine to a State Party to the 1984 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.

End translation.

12. (U) Visit Embassy Kiev's classified website:
www.state.sgov.gov/p/eur/kiev.
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Website pages

