

Decision of 20 May 2008
Court of The Hague (Arnhem)
Registration number AWB 08/13575 and AWB 08/13571

The Afghan Mr. X. applied for asylum on 10 April 2008. His claim was rejected on 16 April 2008, in the accelerated procedure. The appellant appealed. He was said not to be able to await the outcome of his appeal. He asked for an interim measure. Court session took place on 16 May 2008.

The Court

On 25 August 2000, the applicant asked for the first asylum. Rejected on 28 April 2004. He lost his appeal, by final decision from Court of Zutphen from August 2005.

This concerns a repeated asylum request. The review of the request is limited by Article virtue of Article 4:6, General Administrative Law.

The question primarily to be answered is, are there any new facts and circumstances?

Appellant's claim from 10 April is based on *inter alia*:

- statement of the Consulate General of the Islamic Republic of Afghanistan dated 21 January 2008;
- UNHCR letter dated 14 November 2007;
- letter Mr. Qanooni (speaker of the House of Representatives of the Afghanistan National Assembly) dated 8 April 2007;
- letter Mr. Qanooni dated 5 August 2007;
- report of NJCM 24 January 2008;
- video, circumstances with respect to safety in Afghanistan.

Just before the Court session took place, he introduced on 14 May 2008 UNHCR Note on KhAD/WAD of May 2008.

The Immigration and Naturalization Service (IND) (on behalf of the State Secretary of Justice) rejected the claim for not having brought forward new facts and circumstances. At the Court hearing, the IND stated that UNHCR's Note did not contain new facts with respect to the Ministry of Foreign Affairs (MFA) report of 2000.

The Court stated with regard to UNHCR's Note and the sources of COI used by UNHCR:

Introduction:

This Note is issued by UNHCR in the context of the need to assess the eligibility for international protection for Afghan asylum-seekers who were members of KhAD/WAD. It has been prepared by UNHCR using information gathered through research by the Office on KhAD/WAD over the past seven years (2001-2008), including recent interviews with knowledgeable sources, among them persons who were associated with KhAD/WAD at the time; and discussions with one leading academic expert on Afghanistan and particularly

KhAD/WAD. Unless sourced separately, all information in this note is based on that research.

UNHCR refers, after having described *Background on origin of KhAD/WAD*, in Chapter II, *Structure of the KhAD/WAD and staffing issues*, in detail to structure and working methods of KhAD/WAD. In Chapter III, *Linkages with military/militia*, and in Chapter IV, *Operational vs. Support services*, the Court draws attention to paragraphs 16 and 17.

16. At both the national and the provincial/district level, certain Directorates were engaged in active security operations, during which many human rights violations occurred. These were above all the Directorates for Operative Activities for Internal Control of KhAD/WAD Personnel, for Counter-Rebellion, for Surveillance of Foreign and National Suspects, for the Protection of the Government and its Representatives, for Activities linked to Infiltration of Mujaheddin, the Directorate of Interrogation, as well as the Police KhAD/WAD, and the corresponding functional units at provincial and district level. The military KhAD/WAD was present throughout the armed forces' structures down to at least battalion level, according to their functional and geographical structures, but still reported to KhAD/WAD.

17. However, the KhAD/WAD also included non-operational (support) Directorates/Units at the central, provincial and district levels, as follows:

- Administration and Finance
- Cadre / Personnel
- Post and Parcels
- Propaganda and counter propaganda
- Logistics
- Telecommunications and Decoding
- Press and Educational Institutions
- Agents and Informer
- Analysis and Reporting.

Information available to UNHCR does not link these Support Directorates to human rights violations in the same manner as the operational units.

In Chapter V, *Rotation and promotion within the KhAD/WAD*, information is given on the promotion and rotation policy with the service. Paragraphs 23 and 24 of this Chapter states the following:

23. The Netherlands Ministry of Foreign Affairs report on the security services in Afghanistan during 1978-1992²⁸ states that "*As a first assignment, NCOs and officers were posted TO KMD and WAD sections actively engaged in tracking down 'elements that posed a threat to the State'.*" Other sources affirm that this practice was limited to KhAD/WAD officers and NCOs of the Operational Directorates listed in paragraph 16 above, and that the term "tracking down", when translated from Dari, means surveillance, information collection and investigation. The tasks of KhAD/WAD officers and NCOs in practice included these aspects, in as far as preliminary investigations were concerned. However, beyond preliminary investigations, interrogations and further prosecutions were the responsibility of officers working at the Directorate of Interrogation and in Provincial interrogation units, and the Attorney General's office.

24. UNHCR is not able to confirm that there was a systematic rotation policy inside KhAD/WAD. Sources consulted by UNHCR affirmed that rotations within the KhAD/WAD structures were largely based on expertise and experience. In emergency situations, staff may have been shifted to work on a given operation, but within its area of expertise. Military personnel operated within its rank and levels of expertise. One expert stated that, in his view, there was no mandatory rotation; he believes that people could change jobs within die KhAD/WAD, but that it was not a rule or requirement. In the view of that source, such a rotation policy would have gone against any sense of professionalism within the institution. Other sources state that the activities of KhAD/WAD officers were regulated by a number of principles, one of which was confidentiality. For this reason, they believe that the KhAD/WAD could not resort to a general rotation policy, as this would have risked disclosure of information from one Directorate to another.

10. The Court concluded that information provided by UNHCR raises doubts as to the accurateness and completeness of the 2000 MFA report, especially with respect to rotation system and involvement of every (NCO) officer.

11. The Court also awaits the letter from the State Secretary of Justice on Article 1F to the Dutch Parliament as a result of the letters of Mr. M.Y. Qanooni, speaker of the House of Representatives of the Afghanistan National Assembly.

Decision

This case could not have been dealt with in the accelerated procedure.