

**Case No.33-739**

**Reporter- Volkov V.N.**

**Judge- Uglanova R.A.**

### **DEFINITION**

*On July 20, 2001 at an open court session, the civil chamber of the Oryol Regional Court*

*Composed of:*

*Chairperson Volkov V.N.*

*Members of the court chamber: Shevchenko E.N., Timoshina N.V.*

heard a civil case- a cassation filed by the Oryol regional Migration Service against the decision of the Zheleznodorozhny district court of May 03, 2001, which ruled as follows:

"The appeal filed by Tadj Mohammad shall be satisfied. The decision of March 06, 2001 shall be recognized null and void and the Oryol regional MS (Territorial body of the RF Ministry of Federal Affaires in Oryol region) shall be obligated to grant Tadj Mohammad refugee status"

Having heard the report of a Judge of the Regional Court Volkov V.N. the court chamber

### **ESTABLISHED THE FOLLOWING:**

By the decision of the MS in Oryol region of March 06, 2001 Tadj Mohammad was denied refugee status on the territory of the Russian Federation on the grounds that in accordance with Article 1.1 of the RF Federal Law "On Refugees" he did not come within the definition of the term "refugee".

Tadj Mohammad filed an appeal in court against the decision of the Oryol regional MS, denying him refugee status, indicating that he had been a senior lieutenant in the State Security Ministry of the Republic of Afghanistan, member of NDPA, participant of the hostilities against mojaheideens in 1997 in the course of the war in Afghanistan, from September of 1989 till March of 1992 he studied in Oryol at the Kalinin Higher Commanding School of Communications. At present he can not return to Afghanistan owing to fear of repressions by Talibans, who are now in power there, for reason that he was an officer of the SSM and used to study in the USSR.

The court has taken the a/m decision.

In the cassation the Oryol regional MS requests the abolition of the court decision, pleading that studying in the USSR can not be regarded as a ground for persecution in Afghanistan, the petitioner did not provide any evidence of his being persecuted in the Islamic State of Afghanistan or of fear for his life. The applicant enjoys the protection of the country of his nationality and gets this protection in form of the repeated extension of the validity of his national passport in the Embassy of the Islamic State of Afghanistan in Moscow.

Having examined the case materials and discussed the arguments of the cassation, and having heard the representative of the Oryol regional MS, sustaining the complaint, objections to the cassation filed by Tadj Mohammad, his representative by proxy Zaytsev A.A., the court chamber has come to the conclusion that the a/m court decision shall not be changed.

In accordance with Article 1 of the RF Federal Law "On Refugees" (No.95-FL of June 28,1997), A refugee is a person who is not a citizen of the Russian Federation and owing to well-

founded fear of being persecuted for reason of race, religion, citizenship, nationality, membership of a particular social group or political opinion is outside the country his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

From the materials related to the case it follows that from 1987 till 1989 Tadj Mohammad was an officer of the Republic of Afghanistan, in the rank of senior lieutenant, member of NDPA, participant of the hostilities against mojaheideens, provided the connection between the place of the military actions and the military sectors. During the court session this fact was confirmed by the witness Rayshkil Mohammad Aryan, who used to serve with the applicant and who had been granted refugee status on the territory of the RF.

The court has established that from September of 1989 till March of 1992 Tadj Mohammad studied at a special section of Kalinin Higher Commanding School of Communication in Oryol, this fact was confirmed by the letter from the Academy of the Federal Agency of Government Communication and Information about president of the Russian Federation (p.h. 58).

According to information of Oryol State Pedagogic University No.39-57 of November 12, 1996, Tadj Mohammad studied at the preparatory section of the Department of work with foreign students from April 01 till August 31, 1992.

According to the reports contained in letters of the RF Ministry of Foreign Affairs of April 24, 2000 No.478/3? ? and of the UNHCR Office of May 08, 2000, at present most of the territory of Afghanistan is under control of Talibans, whose presence is characterized by cruelty and intolerance towards their enemies.

The leader of the Talibans- mullah M. Omar has issued a decree, presently effective in Afghanistan, which, in point of fact, has legalized the practice of political persecutions concerning people, who used to work in the government and served in the Army of Afghanistan under the rule of former regimes. Afghan citizens: members of NDPA, ex-officials of the Najibullah government, including officers of Afghan Ministry of Interior, State Security Ministry and those Afghan citizens, who used to study in the ex- USSR in the event of their return to Afghanistan, will be subjected to persecution by Talibans or even to physical extermination. According to the information received from Afghanistan, such execution has really had place (p.h. 32-33).

Taking into account the a/m facts, the court has come to the conclusion that Tadj Mohammad has reasons to fear persecution or even physical extermination by Talibans in the event of his return to Afghanistan, in this connection the decision of the Oryol regional MS denying him refugee status is groundless.

The argument advanced in the cassation, that the applicant had not provided any facts or evidence of possible persecution for reason of his serving in the State Security Ministry, membership in NDPA or studying at a military school in the ex-USSR from 1989 till 1992 can not be taken into account and is rebutted by the a/m evidences.

As it follows from the letter of the Embassy of the Islamic State of Afghanistan in the RF, produced by the applicant's representative during the session of the court chamber, it is really dangerous to return to the territory of Afghanistan, most of which is under the control of Talibans, for ex-officers of the State Security Ministry, Ministry of Defense, Ministry of Internal Affaires, students, pupils, who used to study in the USSR, civil servants of the Republic of Afghanistan, NDPA members and their families members. There is a danger for the a/m group of people and also for all educated Afghan citizens, who do not share extreme views of this movement. Pakistan is not one of those states which grant refugee status to the a/m category of Afghan citizens.

The Extension by the applicant of the validity of his national passport does not prove that he enjoys the protection of his rights in Afghanistan or that his country guarantees it to him.

In the cassation the Oryol regional MS has failed to provide evidence rebutting the court

conclusion or pointing to wrong determination of the circumstances relevant in law. The arguments advanced in the cassation can not be the ground for abolition of the court decision. The latter was taken on the basis of evidence which let the court draw a well-grounded conclusion.

In view of the above and being guided by Article 305 of the RSFSR CPC, the court chamber

**HAS RULED AS FOLLOWS:**

The decision of the Zheleznodorozhny district court of May 03, 2001 shall not be changed, the cassation of the Migration Service in Oryol region shall be dismissed.

Chairperson: judge

Judges: