

**DECISION
ON BEHALF OF UZBEKISTAN REPUBLIC**

Gulistskyy Municipal Court on criminal cases in 2010, month - March, day - 09 during open hearing of case, in the court building,

Chairman - G.B. Kholmatov, Judge of Gulistskyy Municipal Court on criminal cases, people's assessors: 1) G. Tashmatova; 2) V. Abduvaitova, with O. Nasirova, Secretary, with participation of M. Kakharov, Deputy Prosecutor of Gulistan city, F. Akhmedova, Interpreter,

considered criminal case under No. 01-106/2010 regarding accusation of:

Takhar Sariyevich Khaidarov - born on October 24, 1982, in Gulistan city, Syrdaryinskyy region, who is of Azerbaijan nationality, citizen of Uzbekistan Republic, finished secondary school, previously convicted on 12/01/2001 by Gulistskyy Municipal Court on criminal cases according to subitems "A" and "B" of part 3 article 169 and part 3 article 123 of Criminal Code of Uzbekistan Republic to 5 years and 6 months of imprisonment, released in October 2001 under Amnesty Act due to Tenth Anniversary of proclaiming Uzbekistan Republic independent dated August 22, 2001, conviction matured, divorced, bound to military service, was not elected as people's deputy, does not have state awards, is privately employed, lives in apt. - 17, house - 19, the 3rd micro-district, Gulistan city, is in custody due to the proceedings starting from January 20, 2010, refused from letter of accusation receiving, is charged with committing crimes according to the article 25-273 part 5 of Criminal Code of Uzbekistan Republic.

Having interrogated the accused, witnesses, having examined the evidence available in the case, having listened to speech of State Prosecuting Officer as regards the case, materials of criminal case and court examination, final speech of the accused, the court

HAS IDENTIFIED:

Takhar Sariyevich Khaidarov, the accused, was involved in illegal purchase and attempted illegal sale of narcotic drugs in significant amounts under the following circumstances:

Thus, on January 18, 2010 at about 20.30 based on statement of G. Khaidarova employees of Criminal Investigation Department and Unit of Organized Crime Combat of Gulistskyy Office of Internal Affairs brought T. Khaidarov, the accused, to the police station on suspicion of crime commitment, and when personal search was performed, one matchbox was found in the pocket of his jacket, there was dried plant in the box which looked like marijuana narcotic drug, it was withdrawn.

After that police officers found cellophane bag under the bath in T. Khaidarov's flat, there was dried substance which looked like marijuana narcotic drug prepared for sale, it was withdrawn.

According to the opinion of court and chemical expertise dated January 18, 2010 under No. 35 the substance withdrawn from T. Khaidarov, the accused, of total weight 2003, 97 grams contains narcotic substance tetrahydrocannabinol and is marijuana narcotic drug.

Therefore, Takhar Sariyevich Khaidarov, the accused, committed crime stipulated by part 5 article 25-273 of Criminal Code of Uzbekistan Republic by doing the above indicated intended actions.

Takhar Sariyevich Khaidarov refused to testify, however during preliminary investigation he explained the following: "... On January 19, 2010 at about 01.00 police officers came to our home and took me away from home, they told me to quickly put on clothes and I put on my clothes quickly and went with police officers to police station of 3rd micro-district. We went inside the police station, afterwards police officers performed personal search in presence of attesting witnesses and during personal search they identified one matchbox in the left pocket of my jacket. I don't know who this matchbox belongs to or where it came from. In presence of attesting witnesses they opened the matchbox withdrawn from my pocket and showed to the rest, i.e. attesting witnesses. There, in the matchbox there was the plant, in dried form, which was similar to the tea, of green colour. Then police officers drew up the report and withdrew this matchbox in presence of attesting witnesses. The box was put in an envelope and packed. After that police officers asked me to write an explanatory note, but I decided not to write it. Then police officers went away somewhere and after some time they came back, meanwhile I remained in the police station. They came back and brought one black cellophane bag with them, I don't know what was in the bag. After that I was brought to State Office of Internal Affairs of Gulistan city. They asked me to write explanatory note once again, but again I did not write it. I don't abuse narcotic drugs, I even don't smoke and don't drink. I do not admit my guilt and these narcotic drugs are not mine."

Abdulla Khamidbayevich Matkulov, interrogated during court session as a witness, explained that he resides in the neighborhood with Takhar Khaidarov, does not have personal grudge against him. On January 18, 2010 at about 21.30 he was at his flat, at this very time he heard knock on the door, he opened the door and saw men, they showed their certificates of employment, introduced themselves as police officers and asked to participate in one case as an attesting witness, to that I agreed. They clarified rights and obligations

to him and the second attesting witness, afterwards we went into Takhar's flat together with police officers; police officers said that they just wanted to examine the flat. They started the examination, during examination they found one cellophane bag to the left from entrance to the house, in the bathroom under the bath, it was filled with small bits of substance of green colour, it was dry and of plant origin, police officers showed to them, afterwards they packed the bag, sealed it and withdrew. They continued to examine other rooms of the flat, but identified nothing else, the officers drew up relevant documents about that and he signed them as an attesting witness. When police officers went into the flat they had nothing in their hands, if they had something suspicious, he would have noticed.

S. Azizov, interrogated during court session as a witness, explained that actually on January 18, 2010 at about 20.30 when he was in a dormitory district police officer came and asked him to take part in one case as an attesting witness, to that he agreed. Then he went to police station of 3rd micro-district together with him. He went there together with his friend Zukhriddin, there was no one in the police station, then police officers brought in one guy, later known to me in Takhar Khaidarov case, explained rights and obligations of an attesting witness to them, in their presence they performed personal search of Takhar Khaidarov and asked to take out everything from the pockets and he took everything out of his pockets, he took matchbox out of his left pocket, which police officers opened and inside the matchbox there was substance of green colour, of peculiar smell, in dry form and of plant origin. Afterwards police officers asked what it was, but he answered that he didn't know. Then police officers drew up the report on physical evidence withdrawal and sealed matchbox in the envelope. Then police officers asked him to participate as an attesting witness in one more case, to that he agreed and Zukhriddin refused and stayed in the police station. After that he and police officers went to house No. 19, and came up on the third floor. One person was asked to participate as an attesting witness from neighbouring flat, later known as A. Matkulov, to that he agreed. Then police officers explained to them their rights and obligations, after that they together with police officers knocked on the door of flat 17, the door was opened by Takhar Khaidarov's sick mother, we went into the flat together with police officers, they informed that they would perform examination; when examining the bathroom cellophane bag of black colour was identified under the bath, there was substance of green colour in it with peculiar smell and of plant origin, which looked like narcotic drug. Police officers withdrew the bag with the substance, sealed, drew up relevant report, which he and the second one signed. When police officers examined other rooms, they found nothing. When they came to the flat of Takhar Khaidarov they had nothing in their hands or under their shirts, if they had something, he would have noticed. They walked in the flat together, after flat's owner opened the door.

Eldor Zhurayevich Akhmatov, interrogated during court session as a witness, explained that actually on January 18, 2010 a statement was received from Gayat Khaidarova residing in the 3rd micro-district, which was submitted for further activity to Sardor Dadabayev that works as the head of office on drug addiction combat in the unit of crime investigation department. In the statement it was indicated that Takhar Khaidarov, the son of the one that submitted the statement abuses drugs and is involved in drugs sale to other persons, also it was indicated that he keeps narcotic drugs at home. The same day at about 20.30 together with S. Dadabayev and S. Zhurayev, employees of State Office of Internal Affairs, Takhar Khaidarov was summoned from home and brought to police station, two attesting witnesses were invited, their rights and obligations were explained to them, after that in presence of attesting witnesses T. Khaidarov was asked to take out all things that are in his pockets, during personal search a matchbox was identified from the left pocket of Takhar Khaidarov, when the matchbox was opened in presence of attesting witnesses, there was substance of green colour, of plant origin with peculiar smell in dried form, when T. Khaidarov was asked what it was, he refused to answer questions and provide explanations. Relevant documents were drawn up, which everyone but T. Khaidarov signed, afterwards we went to the flat of T. Khaidarov together with one of the attesting witnesses and asked one of the neighbours to take part as an attesting witness, after explaining their rights and obligations, we knocked on the door, the door was barely opened by Takhar Khaidarov's mother, she was sick and could barely walk, in presence of his mother and attesting witnesses examined the flat, we did not find anything in the rooms, when examining the bathroom, to be precise under the bowl we found cellophane bag, where there was substance of green colour, of plant origin with peculiar smell in dried form, having drawn up relevant documents, read it out loud, withdrew the substance, when we came back to police station and asked T. Khaidarov what the substance withdrawn from his flat under the bowl in his bathroom was, he again refused to testify, but kept saying that these things aren't his, no illegal actions were done on the part of police officers towards him, the fact that the accused says that this narcotic drug was brought in by police officers is wrong because all police officers walked into his flat together with attesting witnesses.

S. Dadabayev and S. Dzhurayev, interrogated during court session as witnesses, provided similar testimonies as testimony of Eldor Akhmatov, the witness.

Zukhriddin Madaminovich Boltaboyev, the witness, in his testimony given during the investigation and disclosed during court session informed about the following: on January 18, 2010 at about 20.30 when I

was in a dormitory district police officer came and asked us to take part in one case as an attesting witness. After that me and Said went to police station of 3rd micro-district, there was no one in the room, after that they brought in one guy, later known to me under the name of Takhar, explained rights and obligations of an attesting witness to them, in our presence they performed personal search of Takhar and took out everything he had in his pockets onto the table. A matchbox was found in left pocket of the jacket, police officers opened the matchbox in our presence, inside of which there was substance of green colour, of peculiar smell, in dry form and of plant origin. Afterwards police officers asked what it was, but he answered that he didn't know. Then police officers drew up the report on physical evidence withdrawal and sealed matchbox in the envelope. Then police officers asked him to participate as an attesting witness in one more case, but I refused, after that police officers asked me to write explanatory note with that regard.

Having listened to arguments of Takhar Khaidirov, the accused, provided during the investigation about the fact that he did not keep narcotic drugs at his flat and the matchbox withdrawn by police officers from his pocket does not belong to him, also that he has nothing to do with narcotic drugs and they were brought in by police officers, the court considers to provide critical opinion, because he gave such testimony to evade responsibility.

The item 6 of the Resolution of the Plenary of Supreme Court of Uzbekistan Republic under No. 21 dated October 27, 1995 (as amended and supplemented) "On court practice regarding crimes that include illegal circulation of narcotic drugs and psychotropic substances" clarifies that when taking a decision whether the guilty one has intent for sale of illegally produced, purchased, kept narcotic drugs or psychotropic substances the courts should consider aggregate of all evidence about the aspect that these drugs or substances were actually prepared for sale, e.g. identifying of narcotic drugs or psychotropic substances in amounts that exclude only their abuse, packaging of drugs or psychotropic substances into doses, their concealing when transporting or their sending in special secret compartments, the fact that there is equipment for narcotic drugs production, opinion of the examination that the guilty himself/herself are not drug addicts etc. Depending on actually determined circumstances of a case, actions of the guilty one should be qualified according to the articles 25, 273 part 5 of Criminal Code of Uzbekistan Republic.

As we can see from materials of a criminal case, during personal search and examination of a flat, where the defendant lived, total weight of 2003, 97 grams of marijuana were identified and this proves that he kept these narcotic drugs to sell them, also he is not a drug addict.

Despite the fact that Takhar Khaidarov refused to testify in the court and did not admit his guilt during preliminary investigation, his guilt is confirmed by testimonies of the following witnesses A. Matkulov, S. Avizov, E. Akhmetov, S. Dzhurayev, S. Dadabayev and Sh. Eliboyev, provided on a court session, and testimony of the witness Z. Baltabayev provided during the investigation and disclosed on a court session (L.D. 21, 22), statement and explanatory note of Gayat Khaidarova, in which she says that her son abuses drugs, sell and keep them at home (L.D. 3, 8), the report on physical evidence withdrawal (L.D. 4), the report of scene of action examination (L.D. 5-6), the report of medical examination under No. 74 dated January 19, 2010, where it is indicated that narcotic drugs were identified in the urine of T. Khaidarov (L.D. 11), opinion of court and chemical examination under No. 36 dated January 19, 2010 (L.D. 13), the report of confrontations (L.D. 36-37), resolution on item consideration as the physical evidence and its attaching to the criminal case (L.D. 38), act of narcology dispensary under No. 13 dated 25/01/2010 (L.D. 47), as well as other collected evidence relating to the case.

Authorities of preliminary investigation indicated in the resolution on making T. Khaidarov an accused and in a letter of accusation that while he was previously convicted, after conviction he did not make any conclusions, again he is on the way of committing crimes. It is true that Takhar Sariyevich Khaidarov was convicted by Gulistansky Municipal Court on criminal cases dated 12/01/2001 according to the subitems "A" and "B" part 3 article 169 and part 3 article 127 of Criminal Code of Uzbekistan Republic to 5 years and 6 months, he was released in October 2001 according to the Amnesty Act due to the Tenth anniversary of proclaiming Uzbekistan Republic independent dated August 22, 2001, according to article 78 of Criminal Code of Uzbekistan Republic his criminal record matured, that's why the court considers it necessary to acknowledge that T. Khaidarov wasn't convicted before and exclude previous conviction from accusation.

Authorities of preliminary investigation qualified actions of Takhar Sariyevich Khaidarov, the accused, correctly according to the part 5 articles 25, 273 of Criminal Code of Uzbekistan Republic, because he was involved in illegal purchase and attempted illegal sale of narcotic drugs in significant amounts, however intended crime that started but was not completed due to circumstances that did not depend on him and this qualification of his actions is in compliance with requirements of the Resolution of the Plenary of Supreme Court of Uzbekistan Republic under No. 21 dated October 27, 1995 (as amended and supplemented) "On court practice regarding crimes that include illegal circulation of narcotic drugs and psychotropic substances".

While determining punitive measure for T.S. Khaidarov, the accused, the court comes to a conclusion that there are no circumstances in his actions that mitigate or aggravate the punishment.

While determining punitive measure for T.S. Khaidarov, the accused, taking into consideration nature and degree of public danger of the committed crime and the personality of the accused, also taking into account principles of humanism and justice, as well as in consideration of the clarifications of items 3, 4, 26-30, 37-39 of the Resolution of the Plenum of Supreme Court of Uzbekistan Republic dated February 03, 2006 under No. 01 "On practice of assigning of criminal responsibility measures by courts", taking into account his personality, the court makes a conclusion that it is impossible to re-educate him without isolation from society and considers it necessary to assign punishment without applying article 57 of Criminal Code of Uzbekistan Republic to him, within limits of sanction in part 5 articles 25-273 of Criminal Code of Uzbekistan Republic relating to imprisonment.

On the basis of opinion of court and narcology examination T.S. Khaidarov, the accused, does not suffer from drug addiction and does not require compulsory medical treatment, due to this the court considers it necessary not to apply compulsory medical treatment to him.

Also, due to article 211 of Criminal and Procedural Code of Uzbekistan Republic the court considers it necessary to destroy physical evidence - narcotic drug according to the procedure established by the law after this decision enters into force.

On the basis of the above mentioned and following articles 454-457, 462-463, 465-468, 471-473, 4971 - 4974, of Criminal and Procedural Code of Uzbekistan Republic, members of the court:

Decided:

To consider **Takhar Sariyevich Khaidarov** guilty in commitment of crime stipulated by article 25-273 part 5 of Criminal Code of Uzbekistan Republic and following this article to assign 10 (ten) years of imprisonment, with serving the sentence in general regime colony.

Term of punishment should be calculated since the day of detention, i.e. starting from January 20, 2010.

To leave measure of restraint for T. Khaidarov unchanged - holding in custody.

Physical evidence - "Marijuana" narcotic drug of weight 2003, 97 grams kept at Gulistanskyy Office of Internal Affairs shall be destroyed according to the procedure established by the law after this decision enters into force.

The decision can be appealed and protested against within ten days according to appeals procedure in Syrdaryinskyy Regional Court on criminal cases through Gulistanskyy Municipal Court on criminal cases.

This decision was printed by the chairman on the case in a separate room on "Pentium IV" computer.

Chairman	(Signature)	G.B. Khlomatov
People's assessors 1.	(Signature)	G. Tashmatova
2.	(Signature)	V. Abduvaitova

True copy of Decision.

G.B. Kholmatov
Judge of Gulistanskyy Municipal Court
on criminal cases

(Signature)