



INTERNATIONAL MIGRATION AND REFUGEE LAW MOOT COURT COMPETITION

2024

Case for the Finals

22 March 2024

Factual data

On Thursday 21 March 2024 the Immigration Appeals Tribunal awarded refugee status to Amara Ghafoori, who is consequently allowed to reside in Taurasia.

Pending her appeal, the *Memorandum of Understanding for the Provision of an Asylum Partnership Arrangement to strengthen shared international commitments on the protection of refugees and migrants* between the governments of the Grand Duchy of Taurasia and the Republic of Kashmana of 13 September 2022 became operative.

The MoU had not yet been implemented before, as Taurasia was waiting for Kashmana to provide evidence that its commitments in the MoU (cf. Articles 8, 9 and 10) would be met. This evidence was received in December 2023 by the authorities of Taurasia.

On 23 January 2024 the government of Taurasia, referring to a report from the Public Policy Research Institute of Taurasia¹ of 16 January 2024, came to the conclusion that the Republic of Kashmana had given sufficient evidence of fulfilling its obligations under the MoU. The government decided to give execution to the MoU.

On 2 February 2024 Minister of Home Affairs Einrik Kristinsson instructed the Immigration Service to commence applying the MoU to all asylum applicants present in Taurasia and falling under the scope of the MoU.

Arash Ghafoori is one of 12 Afghan asylum applicants against whom the first decisions to remove them from Taurasia to Kashmana are taken under the MoU. Their relocation has been approved by Kashmana.

A copy of the removal decision was served to Arash in person on Thursday 14 March 2024 at his sister's house. Notwithstanding her complaints that her brother relies on her, he was immediately taken into administrative detention. He is remaining in the Immigration Service's *Airport Detention Facility* at Agarthia Airport. This is a closed detention centre.

Against this order, an appeal is only possible in an expedient procedure, to be filed within three working days before the Immigration Appeals Tribunal. This administrative tribunal has full jurisdiction to review the case on its merits, both factually and legally. The appeal suspends the execution of the Immigration Service's decision.

The appeal was submitted in time and the Immigration Appeals Tribunal will today hear the appeal. The tribunal will decide within a period of one working day, *i.e.* prior to the effective removal of Arash.

¹ The institute is a government research institute that examines national and international issues of public policy.

Removal decision

Grand Duchy of Taurasia Immigration Service

GHAFOORI Arash
12, Brygholm Street
1114 CE Agarthia
TAURASIA

14 March 2024

File number: 2023/07/916

Surname: Ghafoori

First name(s): Arash

Date of birth: 5 April 2005

Nationality: Afghan

Date of application for international protection: 22 July 2023

1. Decision: Order to be removed to the Republic of Kashmana

Mr Arash Ghafoori applied for asylum in the Grand Duchy of Taurasia on 22 July 2023. After an initial screening, it was concluded that he has arrived illegally in the territory of the Grand Duchy of Taurasia. He cannot be returned to Afghanistan in accordance with the principle of non-refoulement, enshrined in several international treaties which Taurasia has ratified, i.e. the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; and the International Covenant on Civil and Political Rights.

For asylum claims made after 13 September 2022, the Memorandum of Understanding ("MoU") between the governments of the Grand Duchy of Taurasia and the Republic of Kashmana applies. This MoU creates a mechanism whereby asylum seekers who have entered the territory illegally and who cannot be returned to their country of origin can be removed to Kashmana to have their claim processed there.

The MoU contains a number of safeguards (i.e. Articles 8, 9 and 10) which the Republic of Kashmana must respect. Kashmana has provided with evidence that these guarantees will be respected.

This allows Kashmana to be considered a safe third country and to conclude that Mr Arash Ghafoori will not be at risk in the event of removal and that his human rights will be respected, in line with international law, including the obligation to respect the principle of non-refoulement as expressed in the 1951 Refugee Convention, the International Covenant on Civil and Political Rights and the American Convention on Human Rights which Kashmana has ratified.

In light of these elements, the Immigration Service of the Grand Duchy of Taurasia orders Mr Arash Ghafoori to be removed to the Republic of Kashmana. In accordance with Article 3.2 of the MoU, this relocation has been approved by the authorities of the Republic of Kashmana.

Mr Arash Ghafoori will be relocated with a commercial flight leaving Agharta on Monday 25 March 2024 at 6 pm from the international airport of Agarthia, with destination Sao Miguel, Republic of Kashmana (flight number 2067 KHSM, Kashmana Airline).

2. Detention

To effectuate his removal to Kashmana, Mr Arash Ghafoori is administratively detained in the Airport Detention Facility until his effective removal from Taurasia.

3. Legal remedies

Against this order and the detention decision, an appeal is only possible in expedient procedure before the Immigration Appeals Tribunal, to be filed before 19 March 2024, 5 pm.:

Immigration Appeals Tribunal

23-25, Asylgad Street

1022 EM Agarthia

TAURASIA

Excerpt n°1 - Report from “Public Policy Research Institute of Taurasia” (16 January 2024)

“(…) Under international law, States may make arrangements with other States to ensure international protection. Such arrangements must advance international cooperation to uphold refugee protection, enhance responsibility sharing and be consistent with the widest possible exercise of the fundamental rights and freedoms of asylum-seekers and refugees.

The MoU between Taurasia and Kashmana meets these criteria.

Firstly, asylum-seekers to transfer under a bilateral agreement must be protected against refoulement and have access to fair and efficient procedures for the determination of refugee status and/or other forms of international protection. An examination of how the asylum procedure operates in practice in Kashmana shows that there are fair and efficient asylum procedures to ensure that the claims of asylum seekers are properly determined and that they do not face a risk of refoulement to their country of origin without a proper evaluation of their claims. Taurasia’s and Kashmana’s national asylum systems can be considered equivalent, as they both are developed and well capacitated to efficiently adjudicate individual asylum claims through fair and accessible procedures.

Secondly, bilateral transfer arrangements must also provide several guarantees for each asylum-seeker. Those transferred must be treated in accordance with accepted international standards including, appropriate reception arrangements; access to health, education and basic services; safeguards against arbitrary detention; and that persons with specific needs are identified and assisted. The MoU contains such guarantees at Articles 8, 9 and 10. The obligation to ensure that conditions in the receiving State meet these requirements in practice rests with the transferring State. Taurasia has verified that Kashmana will meet its requirements prior to the implementation of the MoU. It has also undertaken to verify that human rights are respected for asylum seekers removed to Kashmana through annual on-site visits. Taurasia has undertaken to suspend the application of the MoU if these guarantees are no longer respected.

These arguments are borne out by the fact that UNHCR and humanitarian organizations have established emergency transit mechanism centres in Kashmana for refugees coming from Venezuela and other neighbouring countries, proving that it is internationally regarded as a safe country for asylum seekers. (…)

Excerpt n°2 - Public statement from the NGO “Equality for All” (17 January 2024)

“(…) The MoU between the governments of Taurasia and Kashmana effectively extinguishes the right of refugees to be recognized and protected in the country, for all but a few. This text would in practice exclude most people who have been forced to flee their homes to escape conflict and persecution. The reality is that most asylum-seekers in need of international protection who seek it in the Grand Duchy of Taurasia have entered the country illegally because there are no safe and legal routes under Taurasian law that a person can apply for. Consideration of asylum claims will largely be limited to those who were already in the country with lawful status when a change in their circumstances or in their country of origin put them at risk of persecution. (…)”

Excerpt n°3 - Government’s annual report on asylum in Kashmana (1 January 2024)

“(…) There were 98,762 asylum applications in the Republic of Kashmana in the year ending December 2023. This is 30% more applications than in the year ending December 2022.

(…)

In 2023, the success rate for asylum applications from Afghan people lodged in Kashmana was 90%. Among them, women and unaccompanied minors had a success rate of 98%. (…)”.

Excerpt n°4 - Report from the NGO “Community Care” (25 August 2023)

“(…) In order to qualify as a safe third country, the Republic of Kashmana must accordingly be a country where the principle of non-refoulement will be respected, i.e. a country that will not return refugees to another country where their life or freedom would be threatened. There are substantial grounds for believing that there is a real risk that asylum seekers removed from Taurasia to Kashmana would be subject to refoulement, because of Kashmanan authorities’ failure to determine their claims for asylum accurately and fairly :

- Some persons seeking asylum are arbitrarily denied access to asylum procedures;*
- There has been discriminatory access to the asylum procedures and some LGBTQI+ persons have been denied access to asylum procedures;*
- There are some concerns about the impartiality of Kashmana’s decision-making authorities, with high rates of rejection observed for asylum applicants originating from African countries;*
- The efficiency and timeliness of the asylum procedure is of concern, with decisions taking up to one to two years to be issued in some cases. (…)”*