‘Unwanted’ - extraterritorialisation of border procedures and tightening of deportation regulations in Italy. Is resistance still possible?"

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Introduction

On 11 March 2025, the EU Commission presented its new proposal for the Return Regulation. Deportation regulations are set to be significantly tightened, with renewed discussions around the establishment of so-called ‘return hubs’. Ursula von der Leyen, President of the Commission, is proposing that these detention centres for deportees should also be located in non-EU countries – qualified as so-called “safe third countries” (SCO) (art. 38, Asylum Procedure Directive).

So is the Italian government's ‘Albania solution’ back on the table?

In our previous article, we asked why Italy is putting so much emphasis on this expensive and, as we will see below, ill-conceived agreement between Italy and Albania.

In the Italy-Albania protocol, as well as in the EU pact and in the proposal of new Return Regulation, an important aspect is certainly propaganda: asylum seekers are once again defined as a security threats, from which the EU should defend its borders by tightening entry border controls, obstructing access to asylum, and ensuring those who “have no right to remain” are “effectively expelled”.

The proposed Return Regulation is particularly intertwined with the ongoing multi-level legal battles over accelerated border procedures and their externalization under the Italy-Albania protocol. It also aligns with the recent move to transform facilities in Albania into repatriation centres (CPR) via decree-law no. 37/2025.

While the European Court of Justice (ECJ) is being asked to rule on the correct interpretation of the concept of "safe country of origin" (Article 37 of the Asylum Procedures Directive), first by the Czech Republic and then by a growing number of referrals from Italian national courts, various Member States, in particular Italy, are putting pressure on the ECJ, by stressing how its interpretation of this notion affects the EU return policies.

As Meloni stated on 17 February at the Conference of Italian prefects and police authorities: "The hope is that the Court of Justice of the European Union will avert the risk of compromising the repatriation policies, not only of Italy clearly, but of all the member states of the European Union".

This discourse fully shows an overthrowing of the "normal" order of things where Member States should be responsible for planning policies which are in compliance with the EU legal framework on human rights and asylum. Looking again into the Italian situation, including the "current stop" to the implementation of the Italy-Albania protocol, the direct governmental attack to the autonomy of the judicial power, and the main challenges it entails for the rule of law, is essential to understand the recent policy developments at the EU level concerning asylum and returns.

"An independent judiciary is a thorn in Meloni's side, which is why she is seeking a fundamental restructuring of the Italian legal system," says Andreas Grünewald from Brot für die Welt.

After analysing the two further attempts to force migrants into extra-territorialized asylum procedures in Albania and the judicial decisions against this approach, this article will highlight the government's main attempts to overcome any kind of judicial obstacle to its political priorities: from enforcing the so-called SCO list, to defaming – and then expelling – judges who issue decisions that are inconvenient to the government. In particular, we will highlight how the multiplication of laws and decrees to overcome emerging obstacles – rather than challenging the principle of legal certainty – is increasingly obstructing migrant's access to justice and effective remedy.

Two further attempts to implement the Italy-Albania protocol: Italy sends migrants to Albania, but the court in Rome orders to bring them to Italy

As we highlighted in the previous report, the first implementation of Italy-Albania protocol started in October 2024, just few days after the first ECJ decision, where the Italian interpretation of the SCO notion was deemed illegitimate. The ECJ was not the first obstacle to the government's plan to deport people to Albania, as the new "accelerated border procedures" that should have been applied there after the Cutro Decree had already been rejected by Sicilian courts.

On this occasion, all 16 migrants brought to Albania were transferred to Italy in October 2024, after the competent court in Rome did not validate their detention measures in Albania.

Despite the first failure, the Italian government tried twice more to implement the Italy-Albania protocol.

On 5 November 2024, 155 rescued refugees were pre-screened at sea. Eight men from Bangladesh and Egypt were eventually brought to Albania. However, one of the men was immediately transferred to Italy after being belatedly identified as a vulnerable person. On 11 November, the court in Rome decided that the remaining seven migrants were to be brought to Italy, as the court had referred the case to the ECJ.

'The judges in Rome reached a decision that, from a technical legal perspective, differs from the one made for the first group of twelve migrants. On that occasion, their detention had not been validated and their immediate release had been requested in application of European law. The court concluded that Egypt and Bangladesh could not be deemed safe, following the European Court of Justice's interpretation that a country is only considered safe if it guarantees safety across its entire territory and for all categories of citizens without exception. This is the case neither in Egypt nor in Bangladesh. Meanwhile, the government decided to elevate the list of countries considered safe to primary legislation, reducing the number from 22 to 19 through a decree-law, which, however, cannot prevail over EU law.

That is why the judges are awaiting a ruling from the ECJ, which could resolve the "divergent" interpretation, according to the newspaper Domani.

'It should be noted – reads a statement from the Rome tribunal, signed by the president of the immigration section, Luciana Sangiovanni – that the criteria for designating a State as a so-called safe country of origin are established by European Union law. Therefore, while respecting the prerogatives of the national legislator, the judge has the duty to always verify, in a concrete manner – as in any other area of the legal system – the correct application of EU law, which is known to prevail over national law in case of incompatibility, as also provided for by the Italian Constitution.'

Since the ECJ could not have delivered its ruling within 48 hours — the maximum period for detaining individuals without validation — it was necessary to order the migrants' immediate release and their transfer to Italy (Bari, Apulia). In the meantime, the asylum applications of those forcibly taken to Albania had been dismissed as manifestly unfounded — a practice that is, in itself, highly questionable — making it essential to ensure their timely access to the right of defence.

In late November 2024, the Italian government decided to withdraw personnel from the centres, including staff from the controversial operator Medihospes.

By December, the first voices within government circles suggested repurposing the centres in Albania. Nevertheless, by the end of 2024, Giorgia Meloni remained confident that outsourcing accelerated asylum procedures to Albania will be possible.

At the end of January 2025, the navy ship *Cassiopeia* transported 49 migrants — rescued or intercepted in international waters off Lampedusa — to Shëngjin.

The majority came from Bangladesh, as well as Egypt, Gambia, and Côte d'Ivoire. Upon arrival in Shëngjin, all individuals underwent a brief screening. During this latter, it emerged that four of them were unaccompanied minors and two in a situation of particular vulnerability: being not eligible for the Italy-Albania protocol, they were subsequently transferred to Brindisi, Italy. The remaining 44 individuals, including eight Egyptians and 36 Bangladeshis, were held at the border facility in Gjadër, and their applications for international protection were immediately rejected. However, the Court of Appeal in Rome ruled against upholding their detention and referred the case to the European Court of Justice.

Gjadër, Photo: Tavolo Asilo Immigrazione

The Question of Vulnerability and Legal Guarantees in Albania

The Tavolo Asilo e Immigrazione (TAI) is composed of more than 20 civil society organizations. It also conducts independent monitoring of the agreement between Italy and Albania and, as part of this effort, visited the centres in Albania in February 2025.

The use of the vulnerability criterion to exclude migrants from being transferred to Albania, has raised serious concerns regarding the methods and context in which

vulnerability assessments are conducted — specifically, on the high seas onboard military vessels.

Over the years, the Ministry of Health - in its 2017 guidelines on the treatment of torture survivors - and the Ministry of the Interior, as well as the UNHCR and several international organisations have emphasised importance of identifying vulnerabilities in appropriate settings and through the presence of adequately trained personnel. Moreover, it is widely recognised that many vulnerabilities are not immediately apparent and require time to surface - such as psychological distress, experiences of torture, or experiences of intentional, sexual and gender-based violence.

The multiple "pre-screenings" on the government ships and the "hub" ship, which then transfers the selected individuals to Albania, have proven ineffective in all three cases: some individuals had to be brought back to Italy immediately after the screening in Shëngjin. Additionally, during the last transfer, there was not even a designated representative of the IOM (International Organisation of Migration) on board of the "hub" ship, as the contract had not yet been renewed at the time of the crossing. Consequently, doctors from the Italian Navy had to carry out this pre-screening—something not legally provided for, as military doctors are only authorised to examine civilians in emergency situations.

In Albania, the health authority for the maritime and aerial border (USMAF), together with National Institute for Health, Migration and Poverty (INMP), the latter who was not present during the third transfer, conducted the initial examination while still on board. It remains unclear whether the individuals concerned actually get to see a psychologist (and what they can achieve in such a short time). While on the one hand all those forced to cross the Mediterranean are in a situation of vulnerability, the various implementations of the Italy-Albania protocol have shown that the pre-screening procedures were only able to identify immediately visible vulnerabilities.

During the first tour, five out of 16 people had to be transferred to Italy immediately. During the second transfer, it was one person out of nine, and in the last case, five out of 49 individuals had to be brought to Italy immediately due to their vulnerability. This clearly demonstrates that the screening process is ineffective, superficial, and ethically unacceptable. The EU Directive 2011/36, implemented into national law through Legislative Decree 46/2006 and Legislative Decree 24/2014, clearly states that, for example, the identification of victims of human trafficking – a large proportion of refugees – must be carried out by trained professionals and in a safe environment. Neither a military ship nor the centres in Shëngjin and Gjadër are likely to qualify as such safe spaces.

Further serious problems include the confiscation of phones, the legal information about the asylum procedure and their individual situation, which is incomprehensible to most migrants, as well as the conduct of asylum hearings.

The TAI report on the third journey also highlights the unacceptable timeframes of the accelerated procedure, which additionally takes place abroad, where direct legal representation is entirely impossible. A timeline of events illustrates this:

"**28 January:** Arrival in Shëngjin (after four days at sea on a military vessel) and commencement of detention (a measure ordered by the Chief of Police of Rome).
28 January: Hearing before the Territorial Commission for the assessment of the asylum application.
29 January: Notification of the decision rejecting the asylum application.
30 January: Hearing to confirm detention."

The tight deadlines, lack of legal advice, and absence of a lawyer during the hearing and legal proceedings undermine asylum rights, according to TAI. Furthermore, the practical difficulties of reaching a public defender—who may not be well-versed in the relevant law—for a detention review further weaken legal protection.

"We will overcome every obstacle": how Italy keeps on legislating while judges keep referring cases to the European Court of Justice

At the centre of the Italian courts' uncomfortable decisions for the Italian government – which challenged the application of accelerated border procedures first in Sicily and then in Albania — was the notion of the so-called safe country of origin (SCO). While they highlighted the incorrect application of the list, especially the MAECI's (Ministry of Foreign Affairs) own country files, and asked for the list not to be applied, the Italian government tried to make it more binding, transforming it from an inter ministerial decree into a decree law. The decree law no. 158/2024, which came into force on 24 October 2024, was then integrated into the art. 2 of Law 187/2024 – the so-called "decreto flussi".

Through an incessant law-making process, the Italian government intended to "overcome every obstacle" arising along the implementation of the Italy-Albania protocol. These processes, as argued by the lawyer Dario Belluccio during the hearing at the ECJ, were undermining the principle of "legal certainty ".

Also, forced to face continuous legislative changes, lawyers dealing with migration issues felt destabilized and uncomfortable.

"It's not possible to work like this. You go to sleep with a legal framework, and you wake up to new regulations that change everything. We feel suffocated by these constant changes. Every time we have to start all over again. The guarantees for the people we assist continue to diminish". (Interview with a lawyer, 1 February 2025).

On the other hand, the interpretation of a so-called safe country of origin provided by the ECJ - which emphasised the impossibility of considering a country 'partially safe' - excluding certain areas and categories of people - had led to a multiplication of preliminary rulings from Italian courts to the Court of Justice. Amongst them were also decisions issued by the specialised section of the Court of Rome regarding the (non)validation of detentions in Albania.

According to the ECJ decision of 4 October 2024, for a country to be considered safe, it needs to be been demonstrated that "there is generally and consistently no

persecution as defined in Article 9 of Directive 2011/95/EU, no torture or other forms of inhuman or degrading treatment or punishment, nor danger due to indiscriminate violence in situations of internal or international armed conflict" (Annex I of Directive 2013/32/EU). As underlined by ASGI , this de-facto means that most of the countries on the list adopted by the Italian Government cannot be considered safe.

At that point the government adopted further measures to exclude 'inconvenient' judges from the decision-making processes regarding the validation of detentions, transferring the competence from the specialised sections on immigration to the courts of appeal. As some of the lawyers we interviewed shared, this led to a severe regression.

"We've gone back ten years. All of a sudden. We find ourselves dealing with judges who have no specific expertise in this area. It's like starting from scratch. All the work done over the years in the specialised immigration divisions has been undone." (Interview with a lawyer, 12 February 2025).

The expertise that the divisions had gained over time in immigration and asylum matters ceased to be considered an added value and is treated as an obstacle to overcome. Those with less expertise in the field are more useful to the government's plans. Faced with this situation, some courts of appeal made sure to promote informed decision-making processes, setting up groups of judges with experience and expertise in the field.

Another actor in this legal battleground has been the Italian Supreme Court (Court of Cassation). On 19 December 2024, the Civil Section of the Italian Court of Cassation delivered a judgment on the so-called list of safe countries of origin. This ruling was in response to a request from the court in Rome, which had sought clarification in July 2024 on whether Italian judges are obliged to rule in line with the government's list of safe countries of origin, even preceding the ECJ's judgement on 4 October.

The Supreme Court has established two key principles:

1. A judge may disregard the list of safe countries of origin. If the government's classification contradicts the criteria set by European law, the judge is entitled to ignore the ministerial decree.
2. The judge assesses safety on a case-by-case basis. If the applicant presents evidence of specific circumstances of insecurity, the designation of a country as safe may be overturned in their case.

These principles reinforce the role of the judiciary in safeguarding the fundamental rights of migrants.

In light of this scenario, it is becoming more and more apparent that what is at stake in this legal battleground exceeds mere migration management: it concerns the possibility of the judiciary to challenge the legitimacy of procedures and legal references that are functional to political goals and – more broadly – the separation of powers that is the basis of the rule of law.

Starting at the national level in Italy, it is now increasingly shifting to the European level, where the Court of Justice was called upon to examine the compliance of migration, asylum and repatriation policies with European law. Simultaneously the political pressure from the EU Member States is increasing. The aim is clear: to ensure the liberty to proceed with the repatriation of as many foreign citizens as possible, eliminating any restrictions and undermining the foundations of the right to asylum.

Italy's attempts to bring forward the implementation of the EU Migration Pact and to reshape the "return policies" while awaiting the decision of the ECJ

The decision of the European Court of Justice on the joined cases Alace and Canpelli (C-758/24 and C-759/24) - resulting from the preliminary requests sent by the Italian courts regarding the validation of the detention of persons forcibly returned to Albania - was initially expected on 25 February 2025.

In reality, only a first hearing took place on that day, while the decision is not expected until June.

The arguments submitted to the Court for consideration were essentially two: a) the correct interpretation of the notion of 'safety' applied to safe countries of origin - but potentially also 'third' countries - and b) the possibility for judges to exercise 'dissent' with regard to national measures deemed to be in contradiction with European legislation, and therefore to disapply them.

In that hearing, the total reversal of the European Commission's position was of central importance. Unlike in the past, the Commission now supported the possibility of considering a country of origin 'partially safe' — even in the face of European legislation that emphasised that safety should be 'constantly and generally' verifiable.

In addition to this change of trend, some member states — including Italy — have requested that the European pact come into force earlier than the planned date of 2026.

In their opinion, some of the provisions contained in it would have made it possible to circumvent the obstacles that had arisen at the judicial level regarding the application of accelerated procedures at the border, and the effectiveness of repatriations.

The latter also became the subject of a further legislative EU-proposal concerning a new Return Regulation.

Based on the rhetoric of the need to guarantee an 'effective and comprehensive' strategy on the matter, and to ensure the 'effective repatriation' of the people who received the order, it proposed the introduction of a set of instruments aimed at preventing possible 'circumventions' of the legislation. Among these, the 'European repatriation order', valid in all member states, would, according to the legislator, have prevented individuals who received an expulsion order from one state from continuing to circulate in other states. Furthermore, it provided a long list of possible

‘destinations’ for expelled persons - from the country of origin to a variety of ‘third countries’, ‘transit countries’, ‘countries of habitual residence’ and so on.

Transversal to the options identified in the list was, once again, the notion of presumed ‘safety’ of the destination countries: the same issue lying at the heart of the current legal battles at Italian and European levels.

Another key concept mentioned by the proposal of the new EU return directive, is that of so-called "Return Hubs". These should not be compared to the Italy-Albania deal, which remained in force until 27 March 2025, nor to the UK-Rwanda deal. The latter two involve the extraterritorial processing of asylum claims, whereas "Return Hubs" are solely intended for the deportation of migrants without valid residence status in an EU country. But things changed on March 28.

The legal basis for "Return Hubs" is expected to be the new return regulation under the European Migration Pact. However, this regulation will not come into force before 2027 — if the member states reach an agreement and if it successfully passes both the European Parliament and the EU Council. Under the current Return Directive (2008/115/EC), deportations to or via third countries are provided only under certain conditions. Detention in a deportation facility outside the national territory of an EU member state is not foreseen. This means that there is no legal framework at the European level either. Additionally, effective readmission agreements with the respective countries would be required beforehand, and these would first need to be negotiated and established by the EU.

Nevertheless, in December 2024, Giorgia Meloni called for a faster review of the repatriation directive, as her government intends to operate the centres in Albania as a "Return Hub" or, more simply put, as deportation detention facilities.

Meloni is under pressure to justify both the high costs of the centres built in Albania, which now stand empty, and the low number of deportations.

On 28 March 2025, the Italian government approved an amendment to Law No.14/24, the decree-law no. 37/2025, which secures the Italy-Albania deal and allows for a part of the centre to be used as a detention facility. The previous version of the law already provided for a small detention unit, yet no one had been held there so far, raising the question of whether it had been legitimated in the first place.

Interior Minister Matteo Piantedosi downplays the amendment as insignificant, yet the opposite is true: it means that individuals without legal residency, who are already on Italian territory, can now be transferred to Gjadër — where they may be detained for up to 180 days.

Legally, the question arises as to whether an EU member state can simply transfer a person awaiting deportation to administrative detention in a third country outside the EU. How can the procedures and standards for forced returns, as provided for under European law, be upheld in such cases? How can the detainees assert their guaranteed rights if they are held in a distant country where no legal representation is available on site and where ongoing monitoring is virtually impossible? Even now,

the human rights situation in deportation detention centres on Italian territory is, at best, dire.

Another issue, according to Judge Silvia Albano, concerns the handling of asylum applications submitted from detention in a third country — it remains entirely unclear how such cases should be processed. Last year, Albano refused to approve the detention of the first migrants transferred to Albania at the competent court in Rome and subsequently received death threats.

First and foremost, it must be determined whether such centres in third countries – which could, in theory, be located anywhere, today in Albania, tomorrow in Rwanda – are even legally permissible. The existing EU Return Directive (2008/115/EC) does allow for deportations to a third country (not necessarily the country of origin) if appropriate agreements are in place. However, it does not provide for the operation of extraterritorial detention centres for deportees.

Shëngjin: arrival of the Libra, Photo: Kristina Millona

Italy, eager at all costs to maintain its role as a frontrunner in the EU's border control policies, has already pushed ahead by amending Law 14/24, effectively creating a *fait accompli*. Only 49 places are reportedly available, with those affected being transferred from Italy to the facility – to be either deported or returned to Italy within a maximum of 180 days if deportation proves unfeasible. However, it remains uncertain whether deportations can actually be carried out from Albanian territory, as the deal does not explicitly provide for this. In short: impractical, inhumane, legally dubious, and expensive. Human rights organisations and the EU Agency for Fundamental Rights (FRA) have repeatedly criticised the concept of "return hubs" – means deportation centres in third countries. "The detainees would, in effect, be prisoners of an arbitrary power," warns Gianfranco Schiavone from the Italian Association for Juridical Studies on Immigration (ASGI). "The decision to turn the Gjadër facility into a general deportation centre raises serious new legal concerns. Its compliance with EU law is highly questionable, and issues that had previously remained beneath the surface are now coming sharply into focus."

There were several issues behind the changes to the Italy-Albania protocol. Firstly, the intention to mask the failure of its implementation, made evident by the non-operationality of the facilities built in Albania, which, despite having cost millions of euros to build, remained completely deserted. In order to make use of the facilities, individuals already detained in Italy are forcibly transferred to Albania – following the judicial review of their detention. This way, the empty buildings can be 'filled', and no

one talks anymore about the fact that the government's original, unlawful plan has failed.

Furthermore, just as Italy's intention through the Italy-Albania protocol had been to play a 'pioneering' role in defining new policies for the forced removal of persons unwanted in Europe, the same unchanged will was evident in the use of facilities in Albania as Repatriation Centres (CPR).

The major obstacle to the implementation of the Agreement was the lack of validation of detentions. Recent legislative changes now attempt to circumvent this issue by transferring individuals to Albania whose detention orders had previously been issued on Italian territory.

Prime Minister Meloni appeared unfazed by the previously outlined development of involving the ECJ – on the contrary, she seemed determined to strip the 'unpleasant' and 'politically influenced' Italian judges of their authority over the detention of migrants in border centres and place it under European jurisdiction. The Italian government appears convinced that an ECJ ruling would not be driven (solely or possibly even at all) by human rights considerations but be guided primarily by pragmatic concerns: a complete halt to deportations could paralyse the entire EU migration policy envisioned in the pact to be implemented – an almost unthinkable scenario. Should Meloni's position prevail, an ECJ ruling could pave the way for the establishment of border centres in both Italy and Albania.

Despite the European Union's and its member states' attempts to all costs equip themselves with new tools to 'combat' the threat of unwanted migration, and to sever - once and for all - the connections that still existed between confined persons and civil society, heavily undermining access to the right of defence, civil society continued to mobilise.

Resistance is still ongoing at multiple levels, from local to European courts, from borders to carceral spaces: through various formal and informal instruments and strategies, civil society still tries to ensure people have access to fundamental rights, and supports attempts to break the silence imposed in prison facilities, through listening to the voices of confined persons, amplifying them, and multiplying their claims for freedom and dignity.

While a first group of 40 foreign nationals from various Italian CPRs was transferred to Albania, the same UN Human Rights Committee expressed serious concern about the implementation of the Italy-Albania Protocol. Nevertheless, the statement by Markus Lammer, spokesperson for the EU Commission, raises doubts. In his view, there are no legal objections at the EU level to converting the centres in Albania into detention facilities for deportation purposes.

Can a Europe that truly respects human dignity still claim to have a future?

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Photo on the first page: Detention Centre in Sicily, by borderline-europe