The Rome Court of Appeal submits questions to the CJEU on the compatibility of the Italy-Albania Protocol with EU law

The decision of the Rome Court of Appeal in November 2025 represents a significant step in the debate over the Italy-Albania Protocol for the outsourcing of procedures related to migration. The court was called upon to rule on the validation of the detention of a person transferred to the Gjader Centre, a CPR on Albanian territory but under Italian management. The court suspended the proceedings and referred a series of questions to the Court of Justice of the European Union (CJEU) about the legitimacy of the entire agreement.

The specific case concerned a man from Algeria who arrived in Italy in 2024. After an initial refusal of entry issued by the Cagliari Police Chief and an order to leave the country within 7 days, he was issued an expulsion order in 2025, followed by detention at the Rome-Ponte Galeria CPR and subsequently transferred to the Gjader CPR. Only there he applied for international protection, a request that the Italian authorities deemed belated and exploitative, ordering his detention pursuant to Article 6(3) of Legislative Decree No 142/2015. The Court of Appeal, however, held that the issue related not only to the individual's position, but above all to the context in which the procedure was conducted: a non-EU territory where the full application of EU law was not guaranteed. For this reason, it decided to appeal to the CJEU.

The order identifies potentially structural reasons for its unlawfulness. The main critical aspects concern the protocol's compatibility with fundamental rights and European asylum directives.

Power to enter into the agreement: The court doubted Italy's competence to independently conclude the protocol with Albania. The issue of asylum and the management of migration flows is largely regulated by the EU through the Common European Asylum System, and according to Article 3(2) of the TFEU, the Union has exclusive competence when an international agreement risks affecting common rules. The protocol could therefore encroach on an area reserved to the EU.

Conflicts with Union rules on detention: Migrants transferred to Shengjin and Gjader cannot move freely within Albanian territory, and this measure constitutes

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a deprivation of liberty that amounts to detention, even if not formally ordered. European directives also establish that asylum seekers cannot be detained solely because they are asylum seekers and detention must be used in exceptional cases, according to criteria of necessity and proportionality, prioritising alternatives. Finally, even if detention is not validated, the asylum seeker would not be immediately released but would remain detained until transferred to Italy, in violation of EU law.

Undue extension of border procedures: The protocol equates Albanian areas with border zones. However, expedited procedures are permitted only in the immediate vicinity of the European border, not in a third country: this creates a sort of "artificial border" not provided for by EU law.

Right of defense compromised: The distance between Italy and Albania and the rapidity of the procedures make it difficult to ensure effective defense. Italian lawyers have difficulty accessing the centres, and applicants struggle to make an informed choice and contact a lawyer. In this specific case, communication between the lawyer and the applicant proved very complicated.

Inadequate healthcare: The court noted that the protocol provides for the intervention of the Albanian authorities when the Italian authorities are unable to provide the necessary care, thus implicitly acknowledging that the required healthcare standards may not always be met. Furthermore, part of the healthcare provision is delegated to Albania, a third country not subject to European directives on healthcare.

Based on the issues highlighted, the Rome Court of Appeal submitted two preliminary questions to the CJEU:

- whether Italy had the competence to independently conclude the agreement with Albania or whether this matter falls within the exclusive competence of the European Union;
- whether, even if this competence were admitted, Union law, in light of the Charter of Fundamental Rights, still permits the detention and management of asylum procedures in a territory outside of the Union.

Pending the CJEU's response, the Court of Appeal suspended its decision on the validation of the detention and, by law, the detention ceases to be effective after 48 hours.

The Algerian citizen's legal case is only the starting point. The open question concerns the compatibility of the asylum externalisation model with European

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law. The judge is not discussing individual cases, but the principle: can a Member State move asylum seekers outside of the Union while maintaining them subject to EU law? The Court of Justice's response could redefine not only the Italy-Albania Protocol, but also the future structure of the European Pact on Migration and Asylum.

Source(s)

- Coalizione Italiana per le Libertà e i Diritti civili | Coalition for Civil Liberties and Rights (10 December, 2025), Il Protocollo Italia-Albania alla Corte di Giustizia UE [The Italy-Albania Protocol at the Court of Justice of the European Union], https://cild.eu/blog/2025/12/10/il-protocollo-italia-albania-alla-corte-di-giustizia-ue/

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