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Advocate General's Opinion in Case C-414/25 | [Sedrata] ¹

Advocate General Emiliou: the Italy-Albania Protocol is compatible with EU legislation on return and asylum procedures, provided that migrants' rights are fully protected

The Italy-Albania Protocol, signed on 6 November 2023, authorises Italy to establish and operate repatriation and detention centres on Albanian territory under Italian jurisdiction, with the aim of managing migration flows.

In this context, two migrants who had previously been detained in Italy under expulsion orders were transferred to a centre in Albania. While there, they applied for international protection. New detention orders were then issued against them and sent to the Court of Appeal in Rome for approval.

The Court of Appeal declined to uphold the orders, ruling that the national law in question was incompatible with EU law. The Italian authorities then appealed to the Court of Cassation, which referred two questions to the Court of Justice.

The referring Court specifically asked whether EU law on the return of third-country nationals who are staying illegally ² and on international protection procedures ³ allows the detention of asylum seekers in Albania, and whether it permits their detention in a third country instead of the Member State responsible for examining their claims.

Advocate General Nicholas Emiliou holds the view that, **in principle, the Court should consider the Protocol and related Italian legislation to be compatible with EU law, provided that the individual rights and guarantees of migrants under the European asylum system are fully maintained.**

Firstly, the Advocate General notes that **EU law does not prevent a Member State from establishing a detention centre for return procedures outside its own territory.**

However, **the State would still be bound by all EU guarantees for migrants**, including the right to legal counsel, language assistance, and contact with family and relevant authorities. ⁴ In particular, **minors and other vulnerable persons must enjoy the full range of protections required by the asylum system**, including access to healthcare and education.

Secondly, the Opinion states that **the rule allowing asylum seekers to remain in a Member State while their applications are being processed does not entitle them to be brought back to that State's territory** (103).

Nevertheless, **Member States must take the necessary organisational and logistical measures to ensure migrants can access the rights and protections set out in EU law.** ⁵ This includes the right to access a judge and to a prompt judicial review in order to avoid undue detention.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges

of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

² [Directive 2008/115/EC](#) of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

³ [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

⁴ Therefore, if the detention is unlawful, the authorities must swiftly arrange for the migrants to be transported to Italy and released.

⁵ From this perspective, directive 2013/32/EU reiterates the guarantees provided also in [directive 2013/33/EU](#) of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.